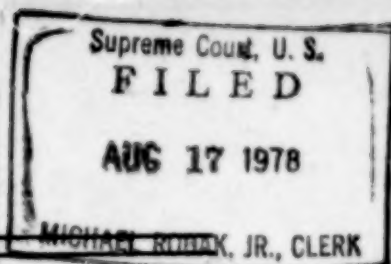


APPENDIX



IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 77-1359

UNITED STATES OF AMERICA,

Petitioner,

—v.—

KIMBELL FOODS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED MARCH 24, 1978
CERTIORARI GRANTED MAY 15, 1978

IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1359

UNITED STATES OF AMERICA,

—v.—

Petitioner,

KIMBELL FOODS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

	Page
Relevant docket entries	1
Original Complaint	8
Exhibits to the Complaint:	
Ex. A: UCC-21, filed September 2, 1966, and Security Agreement dated August 4, 1966	16
Ex. B: UCC-21, filed April 22, 1968, and Security Agreement dated April 17, 1968	19
Ex. C: UCC-21, filed November 21, 1968, and Security Agreement dated November 7, 1968	22
Ex. D (also Defendant's Exhibit 1): UCC Form 1, dated August 7, 1968	26
Ex. I (also Plaintiff's Exhibit 14): Judgment of District Court of Tarrant County, Texas, signed February 4, 1972	27
Original Answer of Republic National Bank of Dallas	30
Original Answer of United States	35
Pre-Trial Order, filed July 13, 1973	40
Evidence:	
Note dated April 17, 1968, in the principal sum of \$27,000.00 (Plaintiff's Exhibit No. 4)	59

Evidence:—Continued

Bills Receivable dated April 17, 1968 (Plaintiff's Exhibit No. 5)	60
Inter-company memo of Kimbell signed by M. D. Kidwell (Plaintiff's Exhibit No. 18)	61
Inter-company and office correspondence dated November 19, 1968, from M. D. Kidwell to Mr. W. E. Hartmann (Plaintiff's Exhibit No. 19)	62
Inter-company and office correspondence dated November 26, 1968, from M. D. Kidwell to Mr. W. E. Hartmann (Plaintiff's Exhibit No. 20)	63
Inter-company and office correspondence dated January 16, 1969, from M. D. Kidwell to Mr. W. E. Hartmann (Plaintiff's Exhibit No. 21)	64
Security Agreement dated February 12, 1969 and Assignment (Defendant's Exhibit No. 2)	67
Financing Statement filed with the Secretary of State on February 18, 1969 (Defendant's Exhibit No. 3)	69
Promissory note dated February 12, 1969, in the principal sum of \$300,000.00 and Assignment (Defendant's Exhibit No. 4)	70
Small Business Administration Application for Loan Under Blanket Guaranty, SBA Loan No. SBLG-ME-752,344-00-04-DAL, dated January 8, 1969, and Blanket Loan Guaranty Agreement between the Small Business Administration and the Republic National Bank of Dallas, dated November 1, 1967 (Defendant's Exhibits No. 5 and 9)	72
Statement of Account covering the period July 1, 1970, through January 15, 1971 (Defendant's Exhibit No. 6)	76
U.C.C.-3 (Assignment) filed with the Secretary of State of Texas on January 21, 1971 (Defendant's Exhibit No. 7)	85
Check from Republic National Bank of Dallas to Kimbell Foods in the sum of \$24,893.10 dated February 12, 1969 (Defendant's Exhibit No. 8)	87
Cashier's check from Republic National Bank of Dallas payable to Robert S. Calvert, Comptroller of Public Accounts and jointly to O. K. Super Markets in the sum of \$3,073.39, dated February 12, 1969 (Defendant's Exhibit No. 10)	89
Testimony of Harold Kindle	91
Order of the Supreme Court granting certiorari	103

The following additional items are contained in the appendix to the petition for writ of certiorari and thus need not be reprinted:

Court of appeals opinion of August 12, 1977	1a
Judgment of the court of appeals	30a
Memorandum opinion of the district court, filed September 8, 1975	31a
District court judgment, filed October 1, 1975	52a
Notice from the clerk of the court of appeals advising that a petition for rehearing and rehearing <i>en banc</i> has been denied	54a

CIVIL DOCKET

UNITED STATES DISTRICT COURT

CA 3 74-56-D

KIMBELL FOODS, INC., a corporation f/k/a KIMBELL
MILLING COMPANY d/b/a KIMBELL GROCERY COMPANY,
PLAINTIFFS

THE STATE OF TEXAS and THE CITY OF DALLAS, TEXAS,
INTERVENING PLAINTIFFS

vs.

REPUBLIC NATIONAL BANK OF DALLAS and
UNITED STATES OF AMERICA, DEFENDANTS

RELEVANT DOCKET ENTRIES

DATE

PROCEEDINGS

1974

Jan. 22 Received and Filed the following from the Fort
Worth Division, U.S. District Court, Northern District
of Texas:

1972

Nov. 15 Filed ORDER on Court's own motion to transfer to
docket of Hon. Leo Brewster, Ft. Worth Div., ND/Texas
Cys. mld to counsel
Orig. & duplicate file w/certified copy of Order of Trans-
fer mld to Ft. Worth Div. along with certified copy of
dkt entries

Nov. 17 Received FILE

5/4/72—Filed ORIGINAL COMPLAINT and issued
SUMMONS (5)

(1)

DATE	PROCEEDINGS
5/9/72	Filed MARSHALS RETURN ON SUMMONS (2) executed 5/5/72 by serving Republic Natl Bank by delivering to Robert P. Martin; the United States by serving Eldon Mahon to Kenneth Mighell; Atty Gen. by certified mail; Small Business Adm. by certified mail.
5/24/72	Filed ORIGINAL ANSWER OF DEFENDANT; REPUBLIC NATIONAL BANK OF DALLAS
7/5/72	Filed ORIGINAL ANSWER of DEFENDANT, UNITED STATES of AMERICA
1973	
Mar. 30	Filed MOTION of the State of Texas For Leave to Intervene
Mar. 30	Filed BRIEF in Support of the State's Motion to Intervene
Apr. 9	Filed Defendant Republic National Bank of Dallas REPLY to the Motion for Leave to Intervene
Apr. 16	Filed ORDER (allowing intervention of The State of Texas and the City of Dallas)
Apr. 16	FILED INTERVENORS COMPLAINT (State of Texas, and City of Dallas, Texas)
Apr. 16	Attorneys of Record notified.
Jun. 19	Filed ANSWER of U.S.A. to Intervenor's Complaint.
Jun. 21	Filed Defendant Republic National Bank of Dallas's ANSWER to Intervenor's Complaint
Jun. 27	Filed Defendant United States Of America's INTERROGATORIES pursuant to Rule 33 to the State of Texas
Jun 27	Filed Defendant United States of America's INTERROGATORIES pursuant to Rule 33 to the City of Dallas
Jul. 13	Filed PRE-TRIAL ORDER TRIAL SET FOR (9:30 AM, September 17, 1973 Probable length of trial in this case is 1/2 day

DATE	PROCEEDINGS
Jul. 13	Filed Supplemental PRE-TRIAL ORDER
Sep. 12	Filed Plaintiff's ANSWER to Intervenor's Complaint
Nov. 8	Filed INTERVENTION of the City of Dallas
1974	
Jan. 21	Filed ORDER THAT ON Consideration of the Court's own motion to transfer the above styled and numbered cause for the reason
Jan. 21	that this Court is disqualified. It is Ordered that the above-styled cause be and is hereby transferred to the Dallas Division, Northern District of Texas. Attorneys Notified
Jan. 21	Original file mailed to Dallas Division
Feb. 11	Vernon O. Teofan—Attorney for Kimbell—Lewis A. Jones—Assistant Attorney General of Texas—Ted McMaster, City of Dallas, Roger Allen—U.S. Attorney's Office—Frank Betancourt—Republic National Bank of Dallas Hearing on status of case—case to be set in March 1974.
May 21	Filed letter of appearance of Catherine B. Jacob & Gordon C. Cass as attorneys for the State of Texas.
May 28	Filed ANSWER OF INTERVENOR, THE STATE OF TEXAS, TO INTERROGATORIES OF THE DEFENDANT, THE U.S.A.
June 25	Filed PLAINTIFF'S ANSWER TO INTERVENTION OF CITY OF DALLAS
July 8	Filed STIPULATION.
July 8	Filed MEMORANDUM BRIEF IN SUPPORT OF PRIORITY OF TAX LIEN OF CITY OF DALLAS FOR AD VALOREM TAXES by Intervenor City of Dallas.

DATE	PROCEEDINGS
July 8	Filed STIPULATION OF ATTORNEY'S FEES.
July 15	Filed ANSWER OF REPUBLIC NATIONAL BANK OF DALLAS TO INTERVENTION OF CITY OF DALLAS.
Jul. 15	CASE TO TRIAL, 2:00 p.m., before Judge William M. Steger. A. L. Vickers for plaintiff; Chas. D. Cabiness for Small Business Administration; Ted P. McMaster for City of Dallas; Catherine Jacob for State of Texas; Frank Betancourt for defendant Republic National Bank. At close of evidence, Court instructed counsel for Plaintiff to submit written Brief by August 5, 1974. All other parties to file Answers to Plaintiff's Brief by August 26, 1974. Case will be taken under advisement. (Mr. Vickers will bring in all Exhibits, both Plaintiff and Defendant, to be submitted to Judge Steger, when he files his Brief on August 5, 1974.) Adjourned 3:15 p.m.
July 29	Filed TRIAL BRIEF OF THE STATE OF TEXAS, INTERVENOR.
Aug. 5	Filed PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR JUDGMENT.
Aug. 26	Filed DEFENDANT'S MOTION FOR EXTENSION OF TIME IN WHICH TO MOVE, ????? OR OTHERWISE PLEAD.
Sept. 3	Filed ORDER GRANTING EXTENSION OF TIME. Copies to attorneys of record.
Sept. 3	Filed POST-TRIAL BRIEF OF DEFENDANT UNITED STATES OF AMERICA.
Sep. 6	Filed PLAINTIFF'S REPLY BRIEF
1975	
Sept. 8	Filed MEMORANDUM OPINION. Certified copies to counsel.

DATE	PROCEEDINGS
Oct. 1	Filed JUDGMENT after trial before the Court without a jury. It is ORDERED that Plaintiff is not entitled to any portion of the sum held in escrow by Republic National Bank of Dallas pursuant to the agreement of Feb. 3, 1971, between said Bank and O. K. Super Markets, Inc., and approved by the Small Business Administration of the U.S.A. and said Kimbell Foods; all relief sought by Plaintiff against Republic National Bank of Dallas and the U.S.A. is denied. It is further ORDERED that the Intervenor, the State of Texas and the City of Dallas, are not entitled to any portion of the sum held in escrow and all relief sought by said Intervenor against Republic National Bank of Dallas and the U.S.A. is denied. It is ORDERED that the sum of \$100,836.03 held in escrow by the Republic National Bank of Dallas as of Sept. 15, 1975, be recovered by and paid over to the Defendant, the U.S.A. It is ORDERED that the Defendants, the U.S.A. and Republic National Bank of Dallas, have and recover the costs of this proceeding from the Plaintiff, Kimbell Foods, Inc. Copies mailed to counsel.
Oct. 7	Filed BILL OF COSTS in the amount of \$20.00.
Oct. 28	Filed Plaintiff's NOTICE OF APPEAL from the final judgment entered October 1, 1975.
Oct. 28	Filed Plaintiff's BOND FOR COST ON APPEAL.
Oct. 29	Mailed copy of NOTICE OF APPEAL with copy of docket sheet to 5th Circuit.
Oct. 29	Mailed copies of NOTICE OF APPEAL to all counsel of record.
Dec. 8	Filed ORDER that the time within which to file the record and docket the above-entitled cause in the U.S. Court of Appeals for the 5th Circuit be and the same is hereby extended to and including 1-27-76. Copies mailed to all counsel of record on 12-09-75.

DATE	PROCEEDINGS
------	-------------

Dec. 9 Mailed certified copy of ORDER extending the time to docket the record on appeal. (Air-Mail to Mr. Wadsworth) 5th Circuit Court of Appeals. (Extended to Jan. 27, 1976.)

1976

Jan. 26 Mailed original case papers to Court of Appeals-Transcript to follow with listed exhibits.

DOCKET
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 75-4105

Date Docketed: 11-19-75

Date Notice of Appeal Filed: 10-28-75

[Caption Omitted]

3-8-76 Brief for Appellant (M)
 3-31-76 Brief for Appellee (USA) (M)
 4-7-76 Reply Brief for Appellant (M)
 3-18-76 Appellee, Rep. Nat'l. Bank, adoptg. brief of U.S.A.
 4-18-77 Case argued, HT—TGG—MARKEY
 8-12-77 Opinion rendered—reversed, TGG
 8-24-77 Rehearing—Mot. for Ext.—Ext. to 9-26-77 (Appellee)
 9-26-77 Petition for Rehearing (M) (J)—Appellee (U.S.A.)
 10-25-77 Order Denying Rehearing (en banc)
 Nov. 2, 1977 Jdgt. as Mdt. Issd. to Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. CA-3-5835-C

KIMBELL FOODS, INC., A Corporation,
f/k/a KIMBELL MILLING COMPANY,
d/b/a KIMBELL GROCERY COMPANY, PLAINTIFF

vs.

REPUBLIC NATIONAL BANK OF DALLAS AND
UNITED STATES OF AMERICA, DEFENDANTS

ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes KIMBELL FOODS, INC., A Corporation, f/k/a KIMBELL MILLING COMPANY, d/b/a KIMBELL GROCERY COMPANY, Plaintiff, and files this, its Original Complaint, complaining of REPUBLIC NATIONAL BANK OF DALLAS and UNITED STATES OF AMERICA, Defendants, and for cause of action, Plaintiff would show the Court the following:

I.

This Court has jurisdiction of this cause of action by virtue of the provisions of Title 28, Section 2410 of the United States Code, this suit being brought by Plaintiff to quiet title to and to foreclose its liens upon personal property in which the UNITED STATES has or claims a security interest.

II.

Plaintiff, KIMBELL FOODS, INC., is a corporation duly incorporated and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business in Forth Worth, Tarrant County, Texas and was formerly known as KIMBELL MILLING COM-

PANY and did business as KIMBELL GROCERY COMPANY.

Defendant, REPUBLIC NATIONAL BANK OF DALLAS, is a national banking corporation organized under the laws of the United States of America, with its principal office and place of business in Dallas, Dallas County, Texas where process may be served upon its president or any vice president.

Defendant, UNITED STATES OF AMERICA, is herein sued on behalf of its agency, Small Business Administration. Service of process may be made by serving a copy of this complaint upon the United States Attorney for the Northern District of Texas, or upon any Assistant United States Attorney in writing filed with the Clerk of this Court and by sending copies of the process and complaint herein by certified mail to the Attorney General of the United States of America at Washington, District of Columbia.

III.

On or about August 4, 1966, O. K. Super Markets, Inc., for good and valuable consideration, made, executed and delivered to Plaintiff, its Security Agreement and Financing Statement granting Plaintiff a security interest in therein listed equipment and in fixtures and all goods, wares and merchandise and any and all additions or accessions thereto to secure payment of the therein described promissory note and all extensions and renewals thereof and all other indebtedness at any time thereafter owing by O. K. Super Markets, Inc. to Plaintiff as well as the discharge of all obligations imposed upon O. K. Super Markets, Inc. thereunder. Attached hereto marked Exhibit "A" and made a part hereof is an exact copy of said Security Agreement and Financing Statement which was filed with the Secretary of State of Texas on September 2, 1966.

IV.

On or about April 17, 1968, said O. K. Super Markets, Inc. for good and valuable consideration, made, executed and delivered to the Plaintiff, its Security Agreement

and Financing Statement granting to Plaintiff a security interest in therein described equipment and in all other furniture, fixtures and equipment, all goods, wares, merchandise and stock in trade and any and all additions and accessions thereto to secure the payment of the therein described promissory note and all extensions and renewals thereof and all other indebtedness at any time thereafter owing by O. K. Super Markets, Inc. to Plaintiff as well as the discharge of all obligations imposed upon O. K. Super Markets, Inc. thereunder. Attached hereto marked Exhibit "B" and made a part hereof is an exact copy of said Security Agreement and Financing Statement which was filed with the Secretary of State of Texas on April 22, 1968.

V.

On or about November 7, 1968, said O. K. Super Markets, Inc. for good and valuable consideration, made, executed and delivered to the Plaintiff, its Security Agreement and Financing Statement granting to Plaintiff a security interest in therein described equipment and in all goods, wares, merchandise and accounts and any and all additions and accessions thereto to secure the payment of the therein described promissory note and all extensions and renewals thereof and all other indebtedness at any time thereafter owing by O. K. Super Markets, Inc. to Plaintiff as well as the discharge of all obligations imposed upon O. K. Super Markets, Inc. thereunder. Attached hereto marked Exhibit "C" and made a part hereof is an exact copy of said Security Agreement and Financing Statement which was filed with the Secretary of State of Texas on November 21, 1968.

VI.

Said hereinabove referred to three (3) Security Agreements and Financing Statements were cumulative of each other and the Security Agreements marked Exhibits "B" and "C" were in addition and in extension of the Security Agreement and Financing Statement, a copy of which is attached hereto and marked Exhibit "A", and under

the laws of the State of Texas, Plaintiff's security interest in the collateral described in said Security Agreements and Financing Statements became duly perfected as of September 2, 1966.

VII.

On or about August 7, 1968 said O. K. Super Markets, Inc. executed and delivered to Defendant, REPUBLIC NATIONAL BANK OF DALLAS, its Financing Statement covering all the debtor's machinery, fixtures, equipment and inventory then existing or thereafter acquired, all replacements and substitutes therefor, all accessions, attachments and additions thereto, and all tools, parts and equipment then or thereafter added to or used in connection with such machinery and equipment, and all similar property thereafter acquired by debtor to secure the payment of funds loaned by REPUBLIC NATIONAL BANK OF DALLAS to O. K. Super Markets, Inc., 90% of which loan was guaranteed by the Small Business Administration of the UNITED STATES OF AMERICA. Attached hereto marked Exhibit "D" is a copy of said Financing Statement which was filed with the Secretary of State of Texas on August 7, 1968. The collateral described in said Financing Statement is also described and included in the Security Agreements and Financing Statements of Plaintiff and said Financing Statement of REPUBLIC NATIONAL BANK OF DALLAS is in partial conflict with the Security Agreements and Financing Statements of Plaintiff.

VIII.

On January 15, 1971, Plaintiff filed suit in the 96th Judicial District Court of Tarrant County, Texas, Cause No. 96-5548-70 against said O. K. Super Markets, Inc., and others to recover, among other things, judgment against said O. K. Super Markets, Inc. for its indebtedness to Plaintiff in the amount of \$18,258.57 principal, plus interest, reasonable contractual and statutory attorneys' fees, costs of suit and for foreclosure of its security interest in the collateral described in the Security Agree-

ments, copies of which are attached hereto marked Exhibits "A", "B" and "C".

IX.

On or about February 3, 1971, an agreement was entered into by and between said O. K. Super Markets, Inc. and Defendant REPUBLIC NATIONAL BANK OF DALLAS and approved as to form and substance by the Defendant Small Business Administration of the UNITED STATES OF AMERICA and Plaintiff, whereunder the collateral covered by the Security Agreements and Financing Statements of Plaintiff, copies of which are attached hereto marked Exhibits "A", "B", and "C", was to be sold and liquidated with the proceeds thereof to be held in escrow by Defendant REPUBLIC NATIONAL BANK OF DALLAS pending a resolution of the above-referred to cause of action No. 96-5548-70 filed in the 96th Judicial District Court of Tarrant County, Texas and to be paid over to the party or parties in the manner and amounts as finally determined to be legal and rightful. Attached hereto marked Exhibit "E" is a true and correct unsigned copy of said agreement.

X.

Thereafter, on or about February 8, 1971 the collateral located at O. K. Super Markets, Inc., store No. 14, 3805 Kiest Boulevard, Dallas, Dallas County, Texas, was sold to Pat H. Hood for the total sum of \$30,000.00, \$18,000.00 thereof being attributable to the inventory of stock in trade and \$12,000.00 thereof to the fixtures, equipment and other property. Attached hereto marked Exhibit "F" is a true and correct copy of the Contract of Sale under which said collateral was sold to Pat H. Hood.

XI.

On or about February 8, 1971 the collateral located at O. K. Super Markets, Inc., store No. 5, 3026 Grand Avenue, Dallas, Dallas County, Texas, was sold to Grand City Groceries, Inc. for a total price of \$30,000.00, \$18,000.00 thereof being attributable to the inventory

of stock in trade and \$12,000.00 thereof to the fixtures, equipment and other property. Attached hereto marked Exhibit "G" is a true and correct copy of the Contract of Sale under which said collateral was sold to Grand City Groceries, Inc.

XII.

On or about February 8, 1971 the collateral located at O. K. Super Markets, Inc., store No. 3, 1903 South Ervay Street, Dallas, Dallas County, Texas, was sold to Charles W. Logan for the total price of \$35,000.00, \$21,000.00 thereof being attributable to the inventory of stock in trade and \$14,000.00 thereof to the fixtures, equipment and other property. Attached hereto marked Exhibit "H" is a true and correct copy of the Contract of Sale under which said collateral was sold to Charles W. Logan.

XIII.

Thereafter, by amended petition, REPUBLIC NATIONAL BANK OF DALLAS was made a party Defendant in said Cause No. 96-5548-70 in the 96th Judicial District Court of Tarrant County, Texas and thereafter said cause as it pertained to said REPUBLIC NATIONAL BANK OF DALLAS was transferred upon the Plea of Privilege of REPUBLIC NATIONAL BANK OF DALLAS to the 134th Judicial District Court of Dallas County, Texas where it remains pending.

XIV.

On January 31, 1972, judgment was entered in said Cause No. 96-5548-70 in favor of Plaintiff and against O. K. Super Markets, Inc. in the sum of \$18,258.57 principal, \$1,186.80 interest and reasonable statutory attorneys' fees in the sum of \$5,000.00 and granting foreclosure of said security interests as the same existed on August 4, 1966, April 17, 1968 and November 7, 1968 in and to all property as reflected in said three (3) Security Agreements, copies of which are attached hereto marked Exhibits "A", "B" and "C". Attached hereto

marked Exhibit "I" and made a part hereof is a true and correct copy of said judgment.

XV.

REPUBLIC NATIONAL BANK OF DALLAS holds in escrow under said agreement of February 3, 1971, sufficient cash sums to pay said Plaintiff's judgment in full and although due demand has been made upon said Defendant, REPUBLIC NATIONAL BANK OF DALLAS, said bank has wholly failed and refused to pay said sums to Plaintiff.

XVI.

Plaintiff is informed and believes that the Small Business Administration of the UNITED STATES OF AMERICA has paid to REPUBLIC NATIONAL BANK OF DALLAS 90% of O. K. Super Markets, Inc.'s indebtedness to the REPUBLIC NATIONAL BANK OF DALLAS which was in the amount of \$252,331.93 on February 3, 1971 and has accordingly been assigned a proportionate interest in the security interest held by REPUBLIC NATIONAL BANK OF DALLAS in said property of O. K. Super Markets, Inc. described in the Financing Statement, a copy of which is attached hereto as Exhibit "D", and that the Small Administration of the UNITED STATES OF AMERICA is now asserting said security interest in said collateral.

XVII.

That Plaintiff's security interest in the property of O. K. Super Markets, Inc. sold under said agreement of February 3, 1971 was duly perfected as of September 2, 1966 and is prior to time, prior in right and superior to the security interest therein asserted by Defendant REPUBLIC NATIONAL BANK OF DALLAS and its assignee, Defendant Small Business Administration of the UNITED STATES OF AMERICA and that Plaintiff is entitled to the proceeds realized from the sale thereof being held by Defendant REPUBLIC NATIONAL BANK OF DALLAS to the extent of the indebtedness due and

owing to it by O. K. Super Markets, Inc., as evidenced by said judgment of January 31, 1972.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays the Court that service of process be had on said Defendants and that on final hearing hereof, Plaintiff recover judgment declaring its security interest in the property of O. K. Super Markets, Inc. sold pursuant to said agreement of February 3, 1971 prior and superior to the security interest asserted by Defendants REPUBLIC NATIONAL BANK OF DALLAS and UNITED STATES OF AMERICA and for judgment against REPUBLIC NATIONAL BANK OF DALLAS in the sum of \$24,445.37 together with interest thereon at the rate of 6% per annum from February 4, 1972, together with all costs of Court incurred in said Cause No. 96-5548-70 and incurred herein, and for such other and further relief, as may be just.

UNGERMAN, HILL, UNGERMAN, ANGRIST,
DOLGINOFF & TEOFAN
Attorneys for KIMBELL FOODS, INC., A
Corporation, f/k/a KIMBELL MILLING
COMPANY, d/b/a KIMBELL GROCERY COM-
PANY, Plaintiff

By: /s/ Vernon O. Teofan
VERNON O. TEOFAN
820 United Fidelity Building
Dallas, Texas 75202—747-3536

EXHIBIT A

FILING OFFICE COPY - UCC-21			4. Maturity Date (if any)
1. Debtor	2. Secured Party		3. For Filing Officer
<p>O K SUPER MARKETS, INC.</p> <p>1903 S. Ervay Dallas, Tex.</p>	<p>KIMBELL MILLING CO. DBA KIMBELL GROCERY COMPANY</p> <p>P. O. Box 1540 Ft. Worth, Tex.</p>	<p>JOHN L. HILL SECRETARY OF STATE FILED 6:50 AM</p>	<p>Assignee</p> <p>SEP 26 5032709</p>
<p><input checked="" type="checkbox"/> Nonstandard Form F. S.</p> <p><input checked="" type="checkbox"/> See Oversize File No. <u>0-4928</u></p> <p><input type="checkbox"/> Cross Reference. See:</p>			

(2) FILING OFFICER COPY - ACKNOWLEDGEMENT
STANDARD FORM UCC-21 - Approved by the Secretary of State of Texas

SECURITY AGREEMENT AND FINANCING STATEMENT

August 4, 1966

(Date)

O. K. Super Markets, Inc., 1903 South Ervny Dallas Texas
(Name) (No. and Street) (City) (State)
hereinafter called "Debtor", for a valuable consideration hereby acknowledged, hereby grant(s) to
Kimbell Milling Company d/b/a Kimbell Grocery Company, 1929 South Main, Ft. Worth, Texas
(Name) (No. and Street) (City) (State)

(hereinafter called "Secured Party"), a security interest in the following property and any and all additions and accessions
(hereinafter called the "Collateral"): List of collateral attached hereto and made a part hereof:

This security agreement and financing statement is given to secure an advance of goods,
wares and merchandise and does not include a pre-existing debt.

to secure payment of a Promissory Note dated August 4, 1966 in the sum of \$ 20,000.00
and all extensions and renewals thereof; said security interest also being given to secure the payment of all other indebtedness
at any time hereafter owing by Debtor to Secured Party as well as the discharge of all obligations imposed upon Debtor here-
under. If this contract after default is placed in the hands of an attorney, the Debtor will pay the Secured Party a reasonable
attorney's fee not exceeding 10% of the unpaid principal and interest; such payment to be secured by the Security Interest herein
created.

Debtor further agrees and warrants:

(a) The Collateral is bought or used primarily for: () Personal, family or household purposes; () Farming opera-
tions; (X) For use in the operation of a business or profession. If checked here (X), the collateral is being acquired, in whole
or in part, with the proceeds of the above mentioned advance; and the Secured Party is authorized to make such advance direct
to the seller.

(b) The Collateral will be kept at 912 Corinth Street Dallas Texas
(Street Address) (City) (State)
or if the last preceding space is left blank, it will be kept at the address shown at the beginning of this agreement.

(c) If the collateral is bought or used primarily for business use, the Debtor maintains a place of business at the address
shown at the beginning of this Agreement; and all other places of business (if any) of Debtor are located as follows:

1146 Pearcey Rd. 3026 Grand Ave. 2900 So. Lamar 4030 Hatcher 4820 E. Grand Dallas, Tex
5109 Bexar St. 4121 Colonial 4123 Oakland 3227 Pennsylvania 3016 Weatherford Ave.

(d) If the Collateral is to be attached to real estate, a description of the real estate is as follows:

Not Applicable

(If not attached to real estate, insert "NOT APPLICABLE")

and the name of the record owner is Not Applicable

If the Collateral is attached to real estate prior to the perfection of the security interest granted hereby, Debtor will on demand of
Secured Party furnish the latter with a disclaimer or disclaimers, signed by all persons having an interest in the real estate, of any
interest in the Collateral which is prior to Secured Party's interest.

THIS AGREEMENT IS SUBJECT TO THE ADDITIONAL PROVISIONS SET FORTH ON THE REVERSE SIDE HEREOF.
THE SAME BEING INCORPORATED HEREIN BY REFERENCE.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this 30th day of August 1966

Kimbell Milling Company d/b/a

O. K. Super Markets, Inc.

Kimbell Grocery Company

(Secured Party)

By J. L. McCreath
Duly Authorized Agent

By:

J. K. T. Miller

Debtor

President

FURTHER AGREEMENTS AND WARRANTIES ON THE PART OF THE DEBTOR
Debtor warrants that his title to the Collateral will be good and free of any liens or outstanding interests except the security interest created by this agreement.

Without the prior written consent of the Secured Party, when Collateral is fixtures, and, or, equipment Debtor will not sell, exchange, lease or otherwise dispose of the Collateral, or of Debtor's interest therein, and will permit no other lien or security interest to attach to the collateral.

Debtor will maintain the collateral in good condition and repair, but without permitting any repairman's lien to attach thereto. Debtor will pay all taxes and assessments imposed upon the Collateral.

Debtor will carry insurance upon the collateral in such amounts, against such hazards, with such insurers and under such terms of policies as may be acceptable to, or requested by, the Secured Party; the insurance policies in every instance to carry a mortgage clause in favor of the Secured Party upon such forms as may be approved by it.

When Collateral is fixtures, and, or, equipment Debtor will not permit the Collateral to be removed from its present location as specified herein, except for temporary periods in the normal and customary use thereof, without the prior written consent of the Secured Party. Collateral consisting of goods, wares and merchandise may be sold in the ordinary course of business, but proceeds claimed by Secured Party. Secured Party may inspect the collateral at any time.

Debtor will pay all costs of filing any financing, continuation or termination statements with respect to the security interest created by this agreement; and the Secured Party is hereby appointed Debtor's attorney in fact to do all acts and things which Secured Party may deem necessary to perfect and continue perfected the security interest created by this agreement and to protect the Collateral. No waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on a future occasion.

All sums at any time expended by the Secured Party for the protection or preservation of the collateral, or of Secured Party's interest therein shall be repayable by Debtor to Secured Party with interest at the rate of 8% per annum; and such repayment shall be secured by the security interest created herein.

If total or partial default is made in the payment at maturity of any sum (principal or interest) at any time secured hereby; or if default is made in the performance of any obligation imposed upon Debtor hereunder; or if any of the representations or warranties of Debtor made in connection with this transaction shall prove to be false; or if any proceeding is instituted by or against the Debtor under the provisions of the Bankruptcy Act or any state insolvency law or in the event of death of Debtor, or if the Secured Party shall at any time deem its rights hereunder insecure — then, in any of such events, the holders of this security interest may at its option declare all indebtedness secured hereby (with all interest accrued thereon) to be immediately due and payable. In such event, the Secured Party may enforce all remedies available to it under the Uniform Commercial Code.

If the Debtor consists of more than one person the liability hereunder is joint and several and all obligations of Debtor shall bind his heirs, executors or administrators or his or its successors or assigns. All rights of the Secured Party will inure to its successors and assigns.

CORPORATION ACKNOWLEDGMENT

THE STATE OF TEXAS,
COUNTY OF Dallas

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared

Joe Elston, President of O. K. Super Markets, Inc.

known to me to be the person and officer

whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said O. K. Super Markets, Inc.

a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 20th day of August A.D. 1966.

(L.S.)

Notary Public in and for

County, Texas.

a corporation, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

In testimony whereof I have hereunto set my hand and official seal this 20th day of August, 1966.

My Commission expires July, 1967

(Notarial Seal)

SECURITY AGREEMENT
AND
FINANCING STATEMENT

File No.

STATE OF _____
County of _____
I hereby certify that this instrument was filed for
record on the _____ day of _____
A.D. 19____, at _____ o'clock
M.

By _____
Clerk

By _____
Secretary of State

By _____
Deputy

FILING OFFICE COPY - UCC-21

4. Maturity Date (if any):

1. Debtor

O K Supermarkets Inc
1903 S Ervay St
Dallas Texas

2. Secured Party

Kimbell Milling Co
1929 S Main
Ft Worth Texas

3. For Filing Office

COUNTY CLERK
DALLAS COUNTY

1993 FEB 22 11 11 00

Assignee

☒ Nonstandard Form☐ See Oversize File No.☐ Cross Reference. See:

(2) Acknowledgment

STANDARD FORM—FORM UCC-21—Approved by the Secretary of State of Texas—Form 1568—The Steck Company, Austin, Texas

FILING OFFICE COPY - UCC-21

4. Maturity Date (if any)

Debtor

O. K. Supermarkets, Inc.
1903 So. Ervay
Dallas, Texas

2. Secured Party

Kimbell Milling Company dba
Kimbell Grocery Company
1929 So. Main
Fort Worth, Texas

3. For Filing Officer

SECRETARY OF STATE
FILED 0000 00

Assignee

APR 22 1993

☒ Nonstandard Form

F. S.

☒ See Oversize File No.

0-14-197

☐ Cross Reference. See:

(2) FILING OFFICER COPY - ACKNOWLEDGEMENT

STANDARD FORM UCC-21 - Approved by the Secretary of State of Texas

SECURITY AGREEMENT AND FINANCING STATEMENT

April 17, 1968
(Date)

O. K. Supermarkets, Inc., 1903 So. Erway, Dallas, Texas
(Name) (No. and Street) (City) (State)
(hereinafter called "Debtor", whether one or more), for a valuable consideration hereby acknowledged, hereby grant(s) to
Kimbell Milling Company d/b/a Kimbell Grocery Company, 1029 So. Main, Fort Worth, Texas
(Name) (No. and Street) (City) (State)
(hereinafter called "Secured Party"), a security interest in the following property and any and all additions and accessions thereto (hereinafter called the "Collateral"): List of collateral attached hereto and made a part hereof:

to secure payment of a Promissory Note dated April 17, 1968 in the sum of \$ 27,000.00 and all extensions and renewals thereof; said security interest also being given to secure the payment of all other indebtedness at any time hereafter owing by Debtor to Secured Party as well as the discharge of all obligations imposed upon Debtor hereunder. If this contract after default is placed in the hands of an attorney, the Debtor will pay the Secured Party a reasonable attorney's fee not exceeding 10% of the unpaid principal and interest, such payment to be secured by the Security Interest herein created.

Debtor further agrees and warrants:

- The Collateral is bought or used primarily for: () Personal, family or household purposes; () Farming operations; (X) For use in the operation of a business or profession. If checked here (X), the collateral is being acquired, in whole or in part, with the proceeds of the above mentioned advance; and the Secured Party is authorized to make such advance direct to the seller.
- The Collateral will be kept at List attached and marked exhibit "3" or if the last preceding space is left blank, it will be kept at the address shown at the beginning of this agreement.
(Street Address) (City) (State)
- If the collateral is bought or used primarily for business use, the Debtor maintains a place of business at the address shown at the beginning of this Agreement; and all other places of business (if any) of Debtor are located as follows:
List attached and marked exhibit "3"
(if no other places of business insert "None")

- If the Collateral is to be attached to real estate, a description of the real estate is as follows:
Not applicable
(If not attached to real estate, insert "NOT APPLICABLE")

and the name of the record owner is _____

If the Collateral is attached to real estate prior to the perfection of the security interest granted hereby, Debtor with an demand of Secured Party furnish the latter with a disclaimer or disclaimers, signed by all persons having an interest in the real estate, of any interest in the Collateral which is prior to Secured Party's interest.

THIS AGREEMENT IS SUBJECT TO THE ADDITIONAL PROVISIONS SET FORTH ON THE REVERSE SIDE HEREOF, THE SAME BEING INCORPORATED HEREIN BY REFERENCE.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this _____ day of _____, 19____

Kimbell Milling Company d/b/a

O. K. Supermarkets, Inc.

Kimbell Grocery Company
(Secured Party)

By: Harold L. Kindle
President Debtor

By: Mr. D. L. Liddell

10000
FURTHER AGREEMENTS AND WARRANTIES ON THE PART OF THE DEBTOR

Debtor warrants that its title to the Collateral will be good and free of any liens or outstanding interests except the security interest created by this agreement.

Without the prior written consent of the Secured Party, the Collateral is fixtures, and, or, equipment. Debtor will not sell, exchange, lease or otherwise dispose of the Collateral, or of Debtor's interest therein, and will permit no other lien or security interest to attach to the collateral.

Debtor will maintain the collateral in good condition and repair, but without permitting any repairman's lien to attach thereto. Debtor will pay all taxes and assessments imposed upon the Collateral.

Debtor will carry insurance upon the collateral in such amounts, against such hazards, with such insurers and under such form of policies as may be acceptable to, or requested by, the Secured Party; the insurance policies in every instance to carry a mortgage clause in favor of the Secured Party upon such forms as may be approved by it.

When Collateral is fixtures, and, or, equipment Debtor will not permit the Collateral to be removed from its present location as specified herein except for temporary periods in the normal and customary use thereof, without the prior written consent of the Secured Party. Collateral consisting of goods, wares and merchandise may be sold in the ordinary course of business, but proceeds claimed by Secured Party. Secured Party may inspect the collateral at any time.

Debtor will pay all costs of filing any financing, continuation or termination statements with respect to the security interest created by this agreement; and the Secured Party is hereby appointed Debtor's attorney in fact to do all acts and things which Secured Party may deem necessary to perfect and continue perfected the security interest created by this agreement and to protect the collateral. No waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on a future occasion.

All sums at any time expended by the Secured Party for the protection or preservation of the collateral, or of Secured Party's interest therein shall be repayable by Debtor to Secured Party with interest at the rate of 8% per annum; and such repayment shall be secured by the security interest herein.

If total or partial default is made in the payment at maturity of any sum (principal or interest) at any time secured hereby; or if default is made in the performance of any obligation imposed upon Debtor hereunder; or if any of the representations or warranties of Debtor made in connection with this transaction shall prove to be false; or if any proceeding is instituted by or against the Debtor under the provisions of the Bankruptcy Act or any state insolvency law or in the event of death of Debtor, or if the Secured Party shall at any time deem its rights hereunder insecure — then, in any of such events, the holders of this security interest may at its option declare all indebtedness secured hereby (with all interest accrued thereon) to be immediately due and payable. In such event, the Secured Party may enforce all remedies available to it under the Uniform Commercial Code.

If the Debtor consists of more than one person the liability hereunder is joint and several and all obligations of Debtor shall bind his heirs, executors or administrators or his or its successors or assigns. All rights of the Secured Party will inure to its successors and assigns.

CORPORATION ACKNOWLEDGMENT

THE STATE OF TEXAS,
COUNTY OF DALLAS

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared

Harold Kandle

known to me to be the person and officer

whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said

O. K. Supermarkets, Inc.

a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18 day of April A.D. 1968

(L.S.)

Charlotte E. Emswiler

Notary Public in and for Dallas County, Texas.

said corporation, and further states that the foregoing instrument was executed by the said corporation for the purposes and purposes therein mentioned and set forth.

In testimony whereof I have hereunto set my hand and official seal this 18th day of April, 1968

My Commission expires January 1, 1972

(Notarial Seal)

File No. _____

SECURITY AGREEMENT
AND
FINANCING STATEMENT

STATE OF _____
County of _____

I hereby certify that this instrument was filed for
record on the _____ day of _____
A.D. 19____ at _____ o'clock
M. _____

By _____
Deputy

Secretary of State

By _____
Deputy

FILING OFFICE COPY — UCC-21

4. Maturity Date (if any):

Filing Officer

Secured Party

O K Super Markets
1903 S Ervay
Dallas Texas

Kimbell Milling Co
dba Kimbell Gro Co
Ft Worth Texas

County Clerk

Assignee

☒ Nonstandard Form

☐ See Oversize File No.

☐ Cross Reference. See:

(2) Acknowledgment

STANDARD FORM—FORM UCC-21—Approved by the Secretary of State of Texas—Form 1568—The Steck Company, Austin, Texas

FILING OFFICE COPY - UCC-21

4. Maturity Date (if any)

3. For Filing Officer

Debtor

O. K. Super Markets, Inc.
1903 South Ervay
Dallas, Texas

2. Secured Party

Kimbell Milling Company
D/D/A
Kimbell Grocery Company
P. O. Box 1540
Fort Worth, Texas 76101

SECRETARY OF STATE
FILED 8:30 AM

Assignee

Nov 21 1983 234950

☒ Nonstandard Form

F. S.

☒ See Oversize File No.

0-17019

☐ Cross Reference. See:

(2) FILING OFFICER COPY - ACKNOWLEDGEMENT

STANDARD FORM UCC-21 — Approved by the Secretary of State of Texas

SECURITY AGREEMENT AND FINANCING STATEMENT

November 7, 1958
(Date)

O. K. Super Markets, Inc., 1903 South Ervay, Dallas, Texas
(Name) (No. and Street) (City) (State)

(hereinafter called "Debtor", whether one or more), for a valuable consideration hereby acknowledged, hereby grant(s) to

Kibbell Milling Company d/b/a Kibbell Grocery Company
(Name) (No. and Street) (City) (State)

(hereinafter called "Secured Party"), a security interest in the following property and any and all additions and accessions

thereinto (hereinafter called the "Collateral"). List attached hereto and made a part hereof:

O K Super Markets, Inc.
1903 South Ervay Street
Dallas, Texas 75215

Collateral located at 912 Corinth Street (O K #11)

- 1-Pruner Belt driven compressor 2 hp. #56A00066R
- 1-Copelandatic 1 hp. #6123010
- 1-Copelandatic 1 hp. #6117021
- 1-Copelandatic 1 hp. #495051
- 1-Rheem Central Air Cond. and heating 0051
- 1-Iron Clad trash pan
- 1-Iron Clad Bottle shed and storage
- 1-3' Leverage Air cold drink box
- 1-3' section 3'x6' oil shelves and 1-3' Console section and two special shelves over cold drinks
- 2 1/4' adjustable condolas
- 30' wall shelving adjustable
- 1-30' reflector mirror
- 2-Back coils 1 hp. each
- 13-metal trays
- 4-wat lugs
- 2-sections shelving for cooler
- 4-nest carts
- 2-fire extinguishers
- 1-3' section Tyler 5 deck produce case #495280
- 1-3' Shaffer frozen food box with 4 tier shelves
- 1-two wheel
- 1-iron produce scale #2159
- 1-iron bread register #449-210465
- 1-iron bread register #550-20355
- 1-iron order drawer (lock type)
- 1-12'x3'x12' special drug rack (glass)
- 1-Robert meat scale (1.25 chart)
- 1-very adding machine
- 1-3/4 hp. Refrigerator (Trimmer #A15554)
- 1-Robert meat slicer, stainless steel #159559
- 1-iron rack
- Assorted knives, cleavers, ladles, etc.
- 1-10' section Tyler meat case with shelves #499906
- 1-30"x40" Galvanized sink
- 1-10" floor safe "A" Class lid, 2 comp.
- 1-Torison covered special check-out stand
- 1-30 cup General Electric Coffee maker
- Refrigeration parts, supplies, ~~accessories~~ accessories; all compressors re-estimated

All other furniture and equipment and accessions. All goods, wares and accessories and accessions. All securities and accessions.

Harold Kindle
Harold Kindle

SECURITY AGREEMENT AND FINANCING STATEMENT

November 7, 1993
(Date)

O. K. Super Markets, Inc., 1993 South Hwy., Dallas, Texas
(Name) (No. and Street) (City) (State)

(hereinafter called "Debtor", whether one or more), for a valuable consideration hereby acknowledged, hereby grant(s) to

Kidell Milling Company d/b/a Kidell Grocery Company (City) (State)

(hereinafter called "Secured Party"), a security interest in the following property and any and all additions and accessions

thereto (hereinafter called the "Collateral"). the attached items and in/a a part thereof

This Security Agreement is a Financing Statement in (given as additional
security for the debt shown below and is to be understood and agreed that
this lien is cumulative of all other liens heretofore given to secure
this debt and all prior liens shall remain in full force and effect.

to secure payment of a Promissory Note dated April 17, 1993 in the sum of \$ 27,000.00 and all extensions and renewals thereof; said security interest also being given to secure the payment of all other indebtedness at any time hereafter owing by Debtor to Secured Party as well as the discharge of all obligations imposed upon Debtor hereunder. If this contract after default is placed in the hands of an attorney, the Debtor will pay the Secured Party a reasonable attorney's fee not exceeding 10% of the unpaid principal and interest, such payment to be secured by the Security Interest herein created.

Debtor further agrees and warrants:

(a) The Collateral is bought or used primarily for: () Personal, family or household purposes; () Farming operations; () For use in the operation of a business or profession. If checked here () , the collateral is being acquired, in whole or in part, with the proceeds of the above mentioned advance; and the Secured Party is authorized to make such advance direct to the seller.

(b) The Collateral will be kept at 912 Cornith Street, Dallas, Texas
(Street Address) (City) (State)
or if the last preceding space is left blank, it will be kept at the address shown at the beginning of this agreement.

(c) If the collateral is bought or used primarily for business use, the Debtor maintains a place of business at the address shown at the beginning of this Agreement; and all other places of business (if any) of Debtor are located as follows:

See attached and marked Exhibit "A"

(if no other places of business insert "None")

(d) If the Collateral is to be attached to real estate, a description of the real estate is as follows:

See Exhibit "B"

(if not attached to real estate, insert "NOT APPLICABLE")

and the name of the record owner is _____

If the Collateral is attached to real estate prior to the perfection of the security interest granted hereby, Debtor will on demand of Secured Party furnish the latter with a disclaimer or disclaimers, signed by all persons having an interest in the real estate, of any interest in the Collateral which is prior to Secured Party's interest.

THIS AGREEMENT IS SUBJECT TO THE ADDITIONAL PROVISIONS SET FORTH ON THE REVERSE SIDE HEREOF. THE SAME BEING INCORPORATED HEREIN BY REFERENCE.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this 14th day of November, 1993

Kidell Milling Company

O. K. Super Markets, Inc.

912 Cornith Street
(Secured Party)

By: Harold Kindell
Debtor

By: David Kindell

President

EXHIBIT I

IN THE DISTRICT COURT
TARRANT COUNTY, TEXAS
96TH JUDICIAL DISTRICT

No. 96-5548-70

KIMBELL FOODS, INC., A Corporation, d/b/a KIMBELL
MILLING COMPANY, KIMBELL GROCERY COMPANY, AND
KIMBELL FORT WORTH COMPANY

vs.

O. K. SUPER MARKETS, INC., A Corporation, JOE F. ELSTON,
HAROLD KINDLE, AND GLENN KINDLE, Jointly and
Severally, and REPUBLIC NATIONAL BANK OF DALLAS,
Jointly and Severally

JUDGMENT

On the 31st day of January, A.D. 1972, came on to be heard the above entitled and numbered cause, and came the Plaintiff by and through its attorneys of record and announced ready for trial, and the Defendants though having answered herein and having been given proper notice of trial, came not, and no jury having been demanded, all matters of fact as well as of law were submitted to the Court, and the Court, after having heard the pleadings, the evidence and arguments of counsel thereon, is of the opinion and finds that Plaintiff's cause of action is liquidated and proven by three Security Agreements, a verified account and guarantees in writing and is entitled to recover judgment against the Defendants for their debt in the amount of \$18,258.57 principal, \$1,186.80 interest, and reasonable statutory attorneys' fees as against the individual Defendant, O. K. SUPER MARKETS, INC., A CORPORATION, in the sum of \$5,000.00, and reasonable contractual attorneys' fees against the individual Defendants, JOE F. ELSTON, HAROLD KINDLE, AND GLENN KINDLE, JOINTLY

AND SEVERALLY, in the sum of \$1,825.85, or a total of \$24,445.37 as against the individual Defendant, O. K. SUPER MARKETS, INC., A CORPORATION, and a total of \$21,271.22 as against the individual Defendants, JOE F. ELSTON, HAROLD KINDLE, AND GLENN KINDLE, JOINTLY AND SEVERALLY. Said judgment to carry joint and several liability as to all Defendants for the sum of \$18,258.57 principal, \$1,186.80 interest or a total of \$19,445.37, together with all costs of Court.

And the Court is further of the opinion and finds that Plaintiff has valid and subsisting security interests as of August 4, 1966, April 17, 1968, and November 7, 1968, in and against any and all property of the Defendant, O. K. SUPER MARKETS, INC., A CORPORATION, as is fully described in said Security Agreements of even date, copies of which are attached hereto and marked Exhibit "A" and referred to herein as if same were set out herein at length, and Plaintiff is entitled to foreclosure of its security interests to satisfy such amounts and costs.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED by the Court that the Plaintiff, KIMBELL FOODS, INC., A CORPORATION, D/B/A KIMBELL MILLING COMPANY, KIMBELL GROCERY COMPANY, AND KIMBELL FORT WORTH COMPANY, do have and recover of and from the Defendants, O. K. SUPER MARKETS, INC., A CORPORATION, JOE F. ELSTON, HAROLD KINDLE, AND GLENN KINDLE, JOINTLY AND SEVERALLY, judgment in the sum of \$18,258.57 principal, \$1,186.80 interest, and reasonable statutory attorneys' fees as against the individual Defendant, O. K. SUPER MARKETS, INC., A CORPORATION, in the sum of \$5,000.00, and reasonable contractual attorneys' fees against the individual Defendants, JOE F. ELSTON, HAROLD KINDLE, AND GLENN KINDLE, JOINTLY AND SEVERALLY, in the sum of \$1,825.85, or a total of \$24,445.37 as against the individual Defendant, O. K. SUPER MARKETS, INC., A CORPORATION, and a total of \$21,271.22 as against the individual Defendants, JOE F. ELSTON,

HAROLD KINDLE, AND GLENN KINDLE, JOINTLY AND SEVERALLY. Said judgment to carry joint and several liability as to all Defendants for the sum of \$18,258.57 principal, \$1,186.80 interest or a total of \$19,445.37, together with interest thereon at the rate of six per cent per annum from date hereof, and for all costs of Court.

IT IS FURTHER ORDERED, ADJUDGED and DECREED by the Court that the Plaintiff, KIMBELL FOODS, INC., A CORPORATION, D/B/A KIMBELL MILLING COMPANY, KIMBELL GROCERY COMPANY, AND KIMBELL FORT WORTH COMPANY, do have and is hereby granted foreclosure of its security interests as same existed on August 4, 1966, April 17, 1968, and November 7, 1968, in and to all property as is reflected in the three Security Agreements, copies of which are attached hereto and marked Exhibit "A", and further that an Order of Sale shall issue to the Sheriff or Constable of any County in the State of Texas directing him to seize and sell such property under execution in satisfaction of the indebtedness found against same being the total sum of \$24,445.37, and execution shall issue to satisfy the indebtedness and if the property cannot be found or the proceeds of such sale be insufficient to satisfy such indebtedness together with all costs of Court, to make the money or any balance thereof remaining unpaid out of any other property of the Defendants for the amounts due from each Defendant as herein specified, as in the case of ordinary executions and that all other executions are proper for the complete enforcement and satisfaction of this judgment issued herein.

SIGNED this 4th day of February, A.D. 1972.

/s/ [Illegible]
Judge Presiding

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

[Caption Omitted]

[Filed May 24, 1972]

ORIGINAL ANSWER OF DEFENDANT,
REPUBLIC NATIONAL BANK OF DALLAS

TO THE HONORABLE UNITED STATES
DISTRICT COURT:

NOW COMES Republic National Bank of Dallas, one of the defendants in the above styled and numbered cause, and in reply to plaintiff's original complaint filed herein, files this its original answer in response thereto, respectfully showing the Court the following:

I.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in ¶ I regarding jurisdiction.

II.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in the first sentence of ¶ II. This defendant admits the allegation contained in the second sentence of ¶ II. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third and fourth sentences of ¶ II regarding service on the United States of America.

III.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ III.

IV.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ IV.

V.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ V.

VI.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ VI.

VII.

This defendant admits the allegations contained in the first and second sentences of ¶ VII. This defendant denies the allegations contained in the last sentence of ¶ VII.

VIII.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ VIII.

IX.

This defendant denies the allegations contained in ¶ IX.

X.

This defendant admits the sale to Pat H. Hood as alleged in ¶ X, but denies that such sale involved any collateral of the plaintiff.

XI.

This defendant admits the sale to Grand City Groceries, Inc., alleged in ¶ XI, but denies that such sale involved any collateral of the plaintiff.

XII.

This defendant admits the sale to Charles W. Logan alleged in ¶ XII, but denies that such sale involved any collateral of plaintiff.

XIII.

This defendant admits the allegations contained in ¶ XIII.

XIV.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ XIV.

XV.

This defendant admits that it has refused to pay the plaintiff's alleged claim, but denies all other allegations contained in ¶ XV.

XVI.

This defendant admits the allegations contained in ¶ XVI.

XVII.

This defendant denies the allegations contained in ¶ XVII.

XVIII.

This defendant denies that plaintiff is entitled to the relief sought in the prayer.

XIX.

Further answering, this defendant says that in the amended cause of action filed in the State Court in Tarrant County, Texas, the plaintiff seeks recovery of its account in the sum of \$18,258.57 for goods, wares and merchandise sold to defendant O. K. Super Markets, Inc.'s stores from July 1, 1970, through January 13, 1971. That on February 12, 1969, Republic National Bank of Dallas made a loan to O. K. Super Markets, Inc., of \$300,000, and out of this sum of money paid to plaintiff \$24,893.10, and in consideration for said payment, it was agreed and understood between the parties, Kimbell Foods, Inc., and Republic National Bank of Dallas, that Republic National Bank of Dallas was paying in full all open accounts owed by O. K. Super Markets, Inc., to Kimbell Foods, Inc., and all other indebtedness then

existing between Kimbell Foods, Inc., and O. K. Super Markets, Inc., and that plaintiff agreed to release all financing statements and security agreements then existing between plaintiff and O. K. Super Markets, Inc., so that the financing statement executed by O. K. Super Markets, Inc., in favor of Republic National Bank of Dallas at the time the loan was made would be prior in right and superior over those previously held by plaintiff, and therefore, plaintiff has no right to any of the proceeds realized from the sales referred to in the plaintiff's original complaint, said proceeds being far less than the debt now owing to defendants.

WHEREFORE, PREMISES CONSIDERED, this defendant prays that the plaintiff be denied all relief sought in its complaint with respect to its claim that its security interest in the property of O. K. Super Markets, Inc., is prior and superior to the security interest of defendant Republic National Bank of Dallas, and that it is entitled to judgment in the sum of \$24,445.37 against this defendant, and this defendant prays for recovery of its costs, and for such other and further relief which may be proper in the premises.

Respectfully submitted,

GARDERE, PORTER & DEHAY
1700 Republic National Bank Bldg.
Dallas, Texas 75201

By /s/ Frank Betancourt
FRANK BETANCOURT
Attorneys for Defendant
Republic National Bank of Dallas

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the above and foregoing answer was mailed this 24th day of May, 1972, to Mr. Vernon O. Teofan, 820 United Fidelity Bldg., Dallas, Texas 75202, attorney for plaintiff.

/s/ Frank Betancourt
FRANK BETANCOURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

[Caption Omitted]

[Filed July 5, 1972]

ORIGINAL ANSWER OF DEFENDANT, UNITED STATES OF AMERICA

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES United States of America, by and through Eldon B. Mahon, United States Attorney for the Northern District of Texas, and Charles D. Cabaniss, Assistant United States Attorney in and for said District, one of the defendants in the above styled and numbered cause, and in reply to plaintiff's original complaint filed herein, files this its original answer in response thereto, respectfully showing the Court the following:

I.

This defendant admits the allegation contained in paragraph I regarding jurisdiction.

II.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in the first sentence of paragraph II. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second and fourth sentences of paragraph II regarding service on the Republic National Bank of Dallas. This Defendant admits the allegation contained in the third and fourth sentences of paragraph II.

III.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph III.

IV.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV.

V.

The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V.

VI.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VI.

VII.

This defendant admits the allegations contained in the first and second sentences of paragraph VII. This defendant denies the allegations contained in the last sentence of paragraph VII.

VIII.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VIII.

IX.

This defendant denies the allegations contained in paragraph IX.

X.

This defendant admits the sale to Pat H. Hood as alleged in paragraph X, but denies that such sale involved any collateral of the plaintiff.

XI.

This defendant admits the sale to Grand City Groceries, Inc., alleged in paragraph XI, but denies that such sale involved any collateral of the plaintiff.

XII.

This defendant admits the sale to Charles W. Logan alleged in paragraph XII, but denies that such sale involved any collateral of plaintiff.

XIII.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XIII.

XIV.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XIV.

XV.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XV.

XVI.

This defendant admits the allegations contained in paragraph XVI.

XVII.

This defendant denies the allegations contained in paragraph XVII.

XVIII.

This defendant denies that plaintiff is entitled to the relief sought in the prayer.

XIX.

Further answering, this defendant says that on February 12, 1969, Republic National Bank of Dallas made a loan to O.K. Super Markets, Inc., of \$300,000, and out of this sum of money paid to plaintiff \$24,893.10, and in consideration for said payment, it was agreed and understood between the parties, Kimbell Foods, Inc., and Repub-

lic National Bank of Dallas, that Republic National Bank of Dallas was paying in full all open accounts owed by O.K. Super Markets, Inc., to Kimbell Foods, Inc., and all other indebtedness then existing between Kimbell Foods, Inc., and O.K. Super Markets, Inc., and that plaintiff agreed to release all financing statements and security agreements then existing between plaintiff and O.K. Super Markets, Inc., so that the financing statement executed by O.K. Super Markets, Inc., in favor of Republic National Bank of Dallas at the time the loan was made would be prior in right and superior over those previously held by plaintiff, and therefore, plaintiff has no right to any of the proceeds realized from the sales referred to in the plaintiff's original complaint, said proceeds being far less than the debt now owing to the defendants.

WHEREFORE, PREMISES CONSIDERED, this defendant prays that the plaintiff be denied all relief sought in its complaint with respect to its claim that its security interest in the property of O.K. Super Markets, Inc., is prior and superior to the security interest of defendant United States of America, and that it is entitled to judgment in the sum of \$24,445.37 against this defendant, and this defendant prays for recovery of its

costs, and for such other and further relief which may be proper in the premises.

Respectfully submitted,
ELDON B. MAHON
United States Attorney

By /s/ Charles D. Cabaniss
CHARLES D. CABANISS
Assistant United States Attorney

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the above and foregoing answer was mailed this 5th day of July, 1972, to Mr. Vernon O. Teofan, 820 United Fidelity Bldg., Dallas, Texas 75202, attorney for plaintiff, and Frank Betancourt, 1700 Republic National Bank Building, Dallas, Texas, attorney for Republic National Bank.

/s/ Charles D. Cabaniss
CHARLES D. CABANISS
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

[Caption Omitted]

[Filed July 13, 1973]

PRE-TRIAL ORDER

A pre-trial conference was held in the above-entitled cause before Honorable Leo Brewster, Judge, on the 26th day of July, 1973. Vernon O. Teofan, Esq. appeared as counsel for Plaintiff, KIMBELL FOODS, INC.; Frank Betancourt, Esq. appeared as counsel for Defendant REPUBLIC NATIONAL BANK OF DALLAS; Claude Brown, Esq. appeared as counsel for the UNITED STATES OF AMERICA; Lewis A. Jones, Esq. appeared as counsel for the Intervenor STATE OF TEXAS and Ted P. MacMaster, Esq. appeared as counsel for the Intervenor CITY OF DALLAS.

1. The following jurisdictional questions were raised and disposed of as hereinafter indicated:

All parties agree and stipulate that this Court has jurisdiction of the causes of action alleged in Plaintiff's complaint, Intervenor's complaint and Defendants' answers.

2. The following disposition was made of pending motions or other similar matters preliminary to trial:

No motions or other similar matters preliminary to trial were pending.

3. In general, the Plaintiff claims:

(1) On or about August 4, 1966, O. K. Super Markets, Inc., for good and valuable consideration, made, executed and delivered to Plaintiff, its Security Agreement and Financing Statement granting Plaintiff a security interest in therein listed equipment and fixtures and in all goods, wares and merchandise and any and all ad-

ditions or accessions thereto to secure payment of the therein described promissory note and all extensions and renewals thereof and all other indebtedness at any time thereafter owing by O. K. Super Markets, Inc. to Plaintiff as well as the discharge of all obligations imposed on O. K. Super Markets, Inc. thereunder which was filed with the Secretary of State of Texas on September 2, 1966. (Plaintiff's Exhibit "1")

(2) On or about April 17, 1968, said O. K. Super Markets, Inc. for good and valuable consideration, made, executed and delivered to Plaintiff its Security Agreement and Financing Statement granting to Plaintiff a security interest in therein described equipment and in all other furniture, fixtures and equipment, all goods, wares, merchandise and stock in trade and any and all additions and accessions thereto to secure the payment of the therein described promissory note and all extensions and renewals thereof and all other indebtedness at any time thereafter owing by O. K. Super Markets, Inc. to Plaintiff as well as the discharge of all obligations imposed upon O. K. Super Markets, Inc. thereunder which was filed with the Secretary of State of Texas on April 22, 1968. (Plaintiff's Exhibit "2")

(3) On or about November 7, 1968, said O. K. Super Markets, Inc. for good and valuable consideration made, executed and delivered to Plaintiff its Security Agreement and Financing Statement granting to Plaintiff a security interest in therein described equipment and in all goods, wares, merchandise and accounts and any and all additions and accessions thereto to secure the payment of the therein described promissory note and all extensions and renewals thereof and all other indebtedness at any time thereafter owing by O. K. Super Markets, Inc. to Plaintiff as well as the discharge of all obligations imposed upon O. K. Super Markets, Inc. thereunder which was filed with the Secretary of State of Texas on November 21, 1968. (Plaintiff's Exhibit "3")

(4) Said three Security Agreements and Financing Statements were cumulative of each other and the Security Agreements dated April 17, 1968 and November 7, 1968 were in addition and an extension of the Se-

curity Agreement and Financing Statement dated August 4, 1966 and under the laws of the State of Texas, Plaintiff's security interest in the collateral described in said Security Agreements and Financing Statements was duly perfected as of September 2, 1966.

(5) On or about February 3, 1971 an agreement (Plaintiff's Exhibit "7") was entered into by and between O. K. Super Markets, Inc. and Defendant REPUBLIC NATIONAL BANK OF DALLAS and approved as to form and substance by Defendant Small Business Administration and Plaintiff whereunder collateral covered by the Security Agreements and Financing Statements of Plaintiff were to be sold and liquidated with the proceeds thereof to be held in escrow by Defendant REPUBLIC NATIONAL BANK and paid over to the party or parties entitled to same after due adjudication and/or mutual agreement between the parties thereto.

(6) On or about February 8, 1971 collateral covered by the Security Agreements and Financing Statements of Plaintiff was sold and liquidated as follows:

A. Collateral located at O. K. Super Markets, Inc., Store No. 14, 3805 Kiest Boulevard, Dallas, Texas was sold to Pat Hood for the total sum of \$30,000.00, \$18,000.00 thereof being attributable to the inventory of stock in trade and \$12,000.00 thereof to the fixtures, equipment and other property (Plaintiff's Exhibits "8" and "9");

B. Collateral located at O. K. Super Markets, Inc., Store No. 5, 3026 Grand Avenue, Dallas, Texas was sold to Grand City Groceries, Inc. for a total price of \$30,000.00, \$18,000.00 thereof being attributable to inventory of stock in trade and \$12,000.00 thereof to fixtures, equipment and other property (Plaintiff's Exhibits "10" and "11"); and

C. Collateral located at O. K. Super Markets, Inc., Store No. 3, 1903 South Ervay Street, Dallas, Texas was sold to Charles W. Logan for the total price of \$35,000.00, \$21,000.00 thereof being attributable to the inventory of stock in trade and

\$14,000.00 thereof to fixtures, equipment and other property (Plaintiff's Exhibits "12" and "13");

and the proceeds of such sales were deposited with REPUBLIC NATIONAL BANK OF DALLAS under the agreement of February 3, 1971.

(7) O. K. Super Markets, Inc. is indebted to Plaintiff as follows:

A. \$18,258.57 principal owing on open account;

B. Interest on said sum from January 1, 1971 until paid at the rate of 6% per annum;

C. Reasonable statutory attorneys' fees in the sum of \$5,000.00;

D. All costs incurred in collecting said sums: all of which are secured by Plaintiff's security interests granted in said Security Agreements and Financing Statements.

(8) Plaintiff's security interest in the property of O. K. Super Markets, Inc. sold pursuant to said agreement of February 3, 1971 is prior in time, prior in right and superior to any security interest therein asserted by Defendant REPUBLIC NATIONAL BANK OF DALLAS and its assignee, Defendant Small Business Administration, and Plaintiff is entitled to be paid from the proceeds realized from the sale thereof being held by Defendant REPUBLIC NATIONAL BANK to the extent of the indebtedness due and owing to it by O. K. Super Markets, Inc. as above set forth.

4. In general, the Defendant claims:

(1) On August 7, 1968, O. K. Super Markets, Inc. executed and delivered to REPUBLIC NATIONAL BANK its Financing Statement (Defendants' Exhibit "1") covering all debtor's machinery, fixtures, equipment and inventory then existing or thereafter acquired, all replacements and substitutes thereof, all accessions, attachments and additions thereto, and all tools, parts and equipment then or thereafter added to or used in connection with such machinery and equipment, and all similar property thereafter acquired by debtor to secure the payment of funds loaned by REPUBLIC NATIONAL

BANK to O. K. Super Markets, Inc., 90% of which loan was guaranteed by Small Business Administration of the United States of America which was filed with the Secretary of State of Texas on or about August 7, 1968.

(2) On or about February 12, 1969, O. K. Super Markets, Inc. for good and valuable consideration, made, executed and delivered to Defendant REPUBLIC NATIONAL BANK OF DALLAS, its Security Agreement (Defendants' Exhibit "2") and Financing Statement (Defendants' Exhibit "3") providing for a security interest in all of debtor's machinery, fixtures, equipment and inventory, then existing or thereafter acquired, all replacements and substitutes therefor, all accessions, attachments and additions thereto, and all tools, parts and equipment then or thereafter added to or used in connection with such machinery and equipment, and all similar property thereafter acquired by debtor located at 1403 South Ervay, 4123 South Oakland, 4630 Hatcher, 3805-7 East Kiest Boulevard, 3026 Grand Avenue, 4121 Colonial, R 912 Corinth Street, 2900 South Lamar, 1903-19 South Ervay, 5109 Bexar, 3227 Pennsylvania, all proceeds of, substitutes and replacements for, accessions, attachments and other additions to, and tools, parts and equipment used in connection with the above property, all property similar thereto thereafter acquired by the debtor to secure the obligations therein stated which Financing Statement was filed with the Secretary of State of Texas on February 18, 1969.

(3) On or about February 12, 1969, Defendant REPUBLIC NATIONAL BANK OF DALLAS loaned to said O. K. Super Markets, Inc. the sum of \$300,000.00 as evidenced by a promissory note (Defendants' Exhibit "4") dated February 12, 1969, executed by O. K. Super Markets, Inc. and payable to Defendant REPUBLIC NATIONAL BANK OF DALLAS as therein specified.

(4) 90% of said loan from Defendant REPUBLIC NATIONAL BANK OF DALLAS to O. K. Super Markets, Inc. was guaranteed by Small Business Administration of the United States of America, as per Blanket

Guaranty Agreement and Application for Loan Under Blanket Guaranty (Defendants' Exhibit "5").

(5) Out of the \$300,000.00 loaned by Defendant REPUBLIC NATIONAL BANK OF DALLAS to O. K. Super Markets, Inc. on February 12, 1969, \$24,892.10 was paid to Plaintiff, paying in full a promissory note dated April 17, 1968, in original principal sum of \$27,000.00 executed by O. K. Super Markets, Inc., payable to Plaintiff, said \$24,893.10 paying principal balance of \$24,000.00 and interest \$893.10 in full.

(6) As of February 12, 1969, no other outstanding promissory note existed between O. K. Super Markets, Inc. and Plaintiff other than said \$27,000.00 note.

(7) In consideration of said payment, it was agreed and understood between Plaintiff KIMBELL FOODS, INC. and Defendant REPUBLIC NATIONAL BANK OF DALLAS, that REPUBLIC NATIONAL BANK OF DALLAS was paying in full all secured indebtedness owed by O. K. Super Markets, Inc. to KIMBELL FOODS, INC.

(8) Plaintiff agreed to release the Security Agreements and Financing Statements then existing between Plaintiff and O. K. Super Markets, Inc. so that the Security Agreement and Financing Statement executed by O. K. Super Markets, Inc. in favor of REPUBLIC NATIONAL BANK OF DALLAS at the time the loan was made would be prior and superior.

(9) On or about February 3, 1971, the Small Business Administration of the United States of America paid to REPUBLIC NATIONAL BANK OF DALLAS 90% of O. K. Super Markets, Inc.'s indebtedness to the REPUBLIC NATIONAL BANK OF DALLAS and was accordingly assigned the security interest held by REPUBLIC NATIONAL BANK OF DALLAS in property of O. K. Super Markets, Inc. described in the Security Agreement and Financing Statement.

(10) The security interest granted in the Financing Statement and Security Agreement in favor of REPUBLIC NATIONAL BANK dated February 12, 1969 is prior in right and superior to those previously held by the Plaintiff.

(11) By paying said \$24,893.10 to Plaintiff, REPUBLIC NATIONAL BANK and Small Business Administration became subrogated to such extent to the rights and security interests, if any, of Plaintiff.

5. In general, the Intervenor's claim:

Claims of Intervenor's are set out in Supplemental Pre-Trial Order.

6. The following facts are established by the pleadings or are established by the stipulations or admissions of counsel:

(1) Plaintiff, KIMBELL FOODS, INC., is a corporation duly incorporated and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business in Fort Worth, Tarrant County, Texas and was formerly known as Kimbell Milling Company and did business as Kimbell Grocery Company.

(2) Defendant, REPUBLIC NATIONAL BANK OF DALLAS, is a national banking corporation, organized under the laws of the United States of America with its principal office and place of business in Dallas, Dallas County, Texas.

(3) Small Business Administration is an agency of Defendant UNITED STATES OF AMERICA.

(4) O. K. Super Markets, Inc. is or was a corporation duly incorporated and existing under and by virtue of the laws of the State of Texas, with its principal offices and place of business in the City of Dallas, County of Dallas and State of Texas.

(5) On or before August 4, 1966, O. K. Super Markets, Inc., for good and valuable consideration, made, executed and delivered to Plaintiff, its Security Agreement and Financing Statement (Plaintiff's Exhibit "1") which was filed with the Secretary of State of Texas on September 2, 1966. No termination statement relating thereto has been executed by Plaintiff or filed with the Secretary of State of Texas.

(6) On or about April 17, 1968, O. K. Super Markets, Inc., for good and valuable consideration, made, executed and delivered to the Plaintiff, its Security Agreement and Financing Statement (Plaintiff's Exhibit "2") which was

filed with the Secretary of State of Texas on April 22, 1968. No termination statement relating thereto has been executed by Plaintiff or filed with the Secretary of State of Texas.

(7) On or about August 7, 1968, O. K. Super Markets, Inc. signed and delivered to REPUBLIC NATIONAL BANK a Financing Statement (Defendants' Exhibit "1") covering the types or items of collateral described in Block 5 thereof which was filed with the Secretary of State of Texas on August 7, 1968. No termination statement relating thereto has been executed by REPUBLIC NATIONAL BANK or the Small Business Administration or filed with the Secretary of State of Texas.

(8) On or about November 7, 1968, O. K. Super Markets, Inc. for good and valuable consideration, made, executed and delivered to the Plaintiff, its Security Agreement and Financing Statement (Plaintiff's Exhibit "3") which was filed with the Secretary of State of Texas on November 21, 1968. No termination statement relating thereto has been executed by Plaintiff or filed with the Secretary of State of Texas.

(9) On February 12, 1969 O. K. Super Markets, Inc. was indebted to Plaintiff in the approximate sum of \$24,893.10 on a promissory note (Plaintiff's Exhibit "4") dated April 17, 1968 in the original principal sum of \$27,000.00. Marked Plaintiff's Exhibit "5" is a statement reflecting charges and credits to said note. No other outstanding promissory note existed between O. K. Super Markets, Inc. and Plaintiff on February 12, 1969.

(10) On or about February 12, 1969 said O. K. Super Markets, Inc. was additionally indebted to Plaintiff for merchandise sold on open account in the sum of \$18,390.93 and has been continuously indebted on open account to Plaintiff thereafter up to and including the present time. Marked Plaintiff's Exhibit "6" is a statement of the accounts between Plaintiff and O. K. Super Markets, Inc. during the period January 15, 1969 through January 15, 1971.

(11) On or about February 12, 1969, O. K. Super Markets, Inc. for good and valuable consideration made, executed and delivered to Defendant REPUBLIC NA-

TIONAL BANK OF DALLAS, its Security Agreement (Defendants' Exhibit "2") providing for a security interest in the therein described collateral.

(12) On or about February 12, 1969, O. K. Super Markets, Inc. signed and delivered to REPUBLIC NATIONAL BANK OF DALLAS a Financing Statement (Defendants' Exhibit "3") covering the types or items of collateral described in Block 5 thereof which was filed with the Secretary of State of Texas on February 18, 1969. No termination statement relating thereto has been executed by REPUBLIC NATIONAL BANK or the Small Business Administration or filed with the Secretary of State of Texas.

(13) On or about February 12, 1969, Defendant REPUBLIC NATIONAL BANK OF DALLAS loaned to said O. K. Super Markets, Inc. the sum of \$300,000.00 as evidenced by a promissory note dated February 12, 1969 executed by O. K. Super Markets, Inc. and payable to Defendant REPUBLIC NATIONAL BANK OF DALLAS as therein specified.

(14) 90% of said loan from Defendant REPUBLIC NATIONAL BANK OF DALLAS to O. K. Super Markets, Inc. was guaranteed by Small Business Administration of the United States of America (Defendants' Exhibit "5").

(15) Out of the \$300,000.00 loan by Defendant REPUBLIC NATIONAL BANK OF DALLAS to O. K. Super Markets, Inc. on February 12, 1969 \$24,893.10 was paid to Plaintiff and applied by Plaintiff to the payment of balance owing on its promissory note (Plaintiff's Exhibit "4").

(16) As reflected in said Plaintiff's Exhibit "6", subsequent to February 12, 1969, O. K. Super Markets, Inc. paid to Plaintiff a sum in excess of \$18,390.93 which was credited by Plaintiff against the oldest outstanding charges on said accounts and the balance now outstanding on said accounts represents charges for merchandise sold by Plaintiff to O. K. Super Markets, Inc. subsequent to February 12, 1969. Marked as Defendants' Exhibit "6" is a statement of the accounts between Plaintiff and O. K.

Super Markets, Inc. during the period July 1, 1970 through January 15, 1971.

(17) After January 15, 1971, Plaintiff transacted no further business with O. K. Super Markets, Inc. and has received no payments from O. K. Super Markets, Inc. on said account and the present principal balance thereof is \$18,258.57.

(18) On January 15, 1971, Plaintiff filed suit in the 96th Judicial District Court of Tarrant County, Texas, Cause No. 96-5548-70 against O. K. Super Markets, Inc. and others to recover, among other things, judgment against said O. K. Super Markets, Inc. for its indebtedness to Plaintiff in the amount of \$18,258.57 principal, plus interest, reasonable contractual and statutory attorneys' fees, costs of suit and foreclosure of its security interest in the collateral described in its Security Agreements (Plaintiff's Exhibits "1", "2" and "3").

(19) On or about February 3, 1971, an agreement was entered into by and between said O. K. Super Markets, Inc. and Defendant REPUBLIC NATIONAL BANK OF DALLAS and approved as to form and substance by Defendant Small Business Administration of the United States of America and Plaintiff whereunder property of O. K. Super Markets, Inc. located at 3805 Kiest Boulevard, 3026 Grand Avenue and 1903 South Ervay was to be sold and liquidated with the proceeds thereof to be held in escrow by Defendant REPUBLIC NATIONAL BANK OF DALLAS and paid over to the party or parties entitled to same after due adjudication and/or mutual agreement between the parties thereto. Marked Plaintiff's Exhibit "7" is a true and correct copy of said agreement.

(20) On or about February 3, 1971 the Small Business Administration of the United States of America paid to REPUBLIC NATIONAL BANK OF DALLAS 90% of O. K. Super Markets, Inc.'s indebtedness to the REPUBLIC NATIONAL BANK OF DALLAS which was in the amount of \$252,331.93 and has accordingly been assigned a proportionate interest in the security interest held by REPUBLIC NATIONAL BANK OF DALLAS in prop-

erty of O. K. Super Markets, Inc. described in the Security Agreement a copy of which is marked Defendants' Exhibit "2". Marked Defendants' Exhibit "7" is a true and correct copy of the Assignment filed with the Secretary of State of Texas on January 21, 1971.

(21) On or about February 8, 1971 the collateral located at O. K. Super Markets, Inc., Store No. 14, 3805 Kiest Boulevard, Dallas, Dallas County, Texas, was sold to Pat H. Hood for the total sum of \$30,000.00, \$12,000.00 thereof being attributed to the fixtures, equipment and other property and \$18,000.00 attributed to inventory of stock in trade. Marked Plaintiff's Exhibit "8" is a true and correct copy of the Contract of Sale under which said collateral was sold to Pat H. Hood. Marked Plaintiff's Exhibit "9" is a true and correct copy of the promissory note executed by Pat Hood referred to in said Contract of Sale.

(22) On or about February 8, 1971 the collateral located at O. K. Super Markets, Inc., Store No. 5, 3026 Grand Avenue, Dallas, Dallas County, Texas, was sold to Grand City Groceries, Inc. for a total price of \$30,000.00, \$18,000.00 thereof being attributable to the inventory of stock in trade and \$12,000.00 thereof to the fixtures, equipment and other property. Marked Plaintiff's Exhibit "10" is a true and correct copy of the Contract of Sale under which said collateral was sold to Grand City Groceries, Inc. Marked Plaintiff's Exhibit "11" is a true and correct copy of the promissory note executed by Grand City Groceries, Inc. referred to in said Contract of Sale.

(23) On or about February 8, 1971, the collateral located at O. K. Super Markets, Inc., Store No. 3, 1903 South Ervay Street, Dallas, Texas, was sold to Charles W. Logan for the total price of \$35,000.00, \$21,000.00 thereof being attributable to the inventory of stock in trade and \$14,000.00 thereof to the fixtures, equipment and other property. Marked Plaintiff's Exhibit "12" is a true and correct copy of the Contract of Sale under which said collateral was sold to Charles W. Logan. Marked Plaintiff's Exhibit "13" is a true and correct copy of the

promissory note executed by Charles W. Logan referred to in said Contract of Sale.

(24) Thereafter by amended petition, REPUBLIC NATIONAL BANK OF DALLAS was made a party Defendant in said Cause No. 96-5548-70 in the 96th Judicial District Court of Tarrant County, Texas and thereafter, said cause as it pertained to said REPUBLIC NATIONAL BANK OF DALLAS was transferred upon the Plea of Privilege of REPUBLIC NATIONAL BANK OF DALLAS to the 134th Judicial District Court of Dallas County, Texas where it remains pending.

(25) On January 31, 1972, judgment was entered in said Cause No. 96-5548-70 in favor of Plaintiff and against O. K. Super Markets, Inc. in the sum of \$18,258.57 principal, \$1,186.80 interest and reasonable attorneys' fees in the sum of \$5,000.00 and granting foreclosure of said security interests as the same existed on August 4, 1966, April 17, 1968 and November 7, 1968 in and to all property as reflected in said three Security Agreements, copies of which are marked Plaintiff's Exhibits "1", "2" and "3". Marked Plaintiff's Exhibit "14" is a true and correct copy of said judgment. Said judgment is final, valid and subsisting and has not been paid in whole or in part.

(26) There is now due and owing Small Business Administration by O. K. Super Markets, Inc. the sum of \$252,331.93 plus interest on said \$300,000.00 note (Defendants' Exhibit "4").

(27) As of March 15, 1973, REPUBLIC NATIONAL BANK OF DALLAS holds in escrow under said agreement of February 3, 1971 the sum of \$86,672.00.

(28) Although due demand has been made by Plaintiff upon said Defendant REPUBLIC NATIONAL BANK OF DALLAS, said bank has wholly failed and refused to pay Plaintiff's claim to said funds.

(29) Although due demand has been made by Plaintiff upon the Small Business Administration, said Small Business Administration has wholly failed and refused to authorize the payment of Plaintiff's claim to said funds.

7. The contested issues of fact are:

(1) Whether or not, in consideration of the payment of \$24,893.10 to Plaintiff on or about February 12, 1969, it was agreed and understood between Plaintiff and Defendant REPUBLIC NATIONAL BANK OF DALLAS that REPUBLIC NATIONAL BANK OF DALLAS was paying in full all secured indebtedness owed by O. K. Super Markets, Inc. to KIMBELL FOODS, INC.

(2) Whether or not Plaintiff agreed, expressly or impliedly, with REPUBLIC NATIONAL BANK OF DALLAS to release all Financing Statements and Security Agreements existing on February 12, 1969 between Plaintiff and O. K. Super Markets, Inc. so the Financing Statement and Security Agreement executed by O. K. Super Markets, Inc. in favor of REPUBLIC NATIONAL BANK OF DALLAS at the time the loan was made would be prior in right and superior to the Security Agreements and Financing Statements held by Plaintiff.

(3) What amount would be a reasonable attorneys' fee for the services of the attorneys for the Plaintiff which have been rendered by them in representing the Plaintiff in connection with the collection of its claim against O. K. Super Markets, Inc. and the enforcement of its security interests relating thereto.

(4) Whether or not the Financing Statement (Defendants' Exhibit "1") filed with the Secretary of State on August 7, 1968 was signed and filed for the purpose of perfecting, in whole or in part, the security interest provided for in the Security Agreement dated February 12, 1969 (Defendants' Exhibit "2").

(5) What sums, if any, have been expended, or what costs, if any, have been incurred by the Plaintiff for the protection or preservation of its security interest in the collateral described in its three Security Agreements (Plaintiff's Exhibits "1", "2" and "3").

8. The contested issues of law are:

(1) Whether or not the security interest provided for in the Security Agreement dated February 12, 1969 in favor of REPUBLIC NATIONAL BANK (Defendants'

Exhibit "2") is prior in right and superior to the security interests provided for in the Security Agreement and Financing Statement dated August 4, 1966 (Plaintiff's Exhibit "1"), the Security Agreement and Financing Statement dated April 17, 1968 (Plaintiff's Exhibit "2") or the Security Agreement and Financing Statement dated November 7, 1968 in favor of the Plaintiff.

(2) Whether or not the security interest provided for in the Financing Statements in favor of the Plaintiff (Plaintiff's Exhibits "1", "2", and "3") were extinguished upon the payment to Plaintiff of the outstanding balance due and owing on O. K. Super Markets, Inc.'s promissory note dated April 17, 1968 in the original principal sum of \$27,000.00.

(3) Whether or not the security interests provided for in the Security Agreements and Financing Statements in favor of Plaintiff were extinguished when the balance of O. K. Super Markets, Inc.'s open account indebtedness existing as of February 12, 1969 was thereafter paid.

(4) Whether or not the judgment entered in Cause No. 96-5548-70 in the District Court of Tarrant County, Texas 96th Judicial District, establishes or fixes, as against Defendants and Intervenor, the amount of Plaintiff's claim against O. K. Super Markets, Inc. secured by the security interests provided for in the Security Agreements and Financing Statements in favor of Plaintiff.

(5) Whether or not Plaintiff is entitled to recover attorneys' fees as against O. K. Super Markets, Inc. which are secured by the security interests provided for in the Security Agreements and Financing Statements in favor of Plaintiff.

(6) Whether or not the security interests provided for in the Security Agreements and Financing Statements in favor of Plaintiff securing the payment of such attorneys' fees are prior in right and superior to the security interests provided for in the Security Agreement in favor of REPUBLIC NATIONAL BANK OF DALLAS.

(7) Whether or not the security interest provided for in the Security Agreement in favor of REPUBLIC NATIONAL BANK dated February 12, 1969 (Defendants' Exhibit "2") is perfected, in whole or in part, by the

Financing Statement filed with the Secretary of State on August 7, 1968 (Defendants' Exhibit "1").

(8) Whether or not the Plaintiff is a party to or a beneficiary under the agreement of February 3, 1971 entered into by and between O. K. Super Markets, Inc. and REPUBLIC NATIONAL BANK OF DALLAS and approved as to form and substance by Small Business Administration and Plaintiff (Plaintiff's Exhibit "7").

(9) Whether or not the security interests provided for in the Security Agreements in favor of the Plaintiff (Plaintiff's Exhibits "1", "2" and "3") securing the repayment of sums expended or costs incurred by the Plaintiff for the protection or preservation of its security interest in the collateral described in said Security Agreements is prior in right and superior to the security interest provided for in the Security Agreement in favor of REPUBLIC NATIONAL BANK (Defendants' Exhibit "2").

(10) Whether or not REPUBLIC NATIONAL BANK and the Small Business Administration are subrogated to the claims and security interests of Plaintiff, if any, by reason of the payment to Plaintiff of said \$24,893.10 on or about February 12, 1969.

9. The following exhibits were marked:

A. Plaintiff's Exhibits

1. Security Agreement and Financing Statement dated August 4, 1966 with Filing Office Copy—UCC-21 attached.

2. Security Agreement and Financing Statement dated April 17, 1968 with Filing Office Copies—UCC-21's attached.

3. Security Agreement and Financing Statement dated November 7, 1968 with Filing Office Copies—UCC-21's attached.

4. Copy of note dated 4/17/68 in the original principal sum of \$27,000.00 executed by O. K. Super Markets, Inc. and payable to Plaintiff.

5. Statement relating to promissory note of O. K. Super Markets, Inc. to Plaintiff dated 4/17/68 in the original principal sum of \$27,000.00.

6. Statements of account between Plaintiff and O. K. Super Markets, Inc. covering the period January 15, 1969 through January 15, 1971.

7. Agreement dated February 3, 1971 between O. K. Super Markets, Inc. and Republic National Bank and approved as to form and substance by Small Business Administration and Kimbell Foods, Inc.

8. Contract of Sale dated February, 1971 between O. K. Super Markets, Inc. and Pat H. Hood.

9. Installment promissory note dated February 8, 1971 in the principal sum of \$25,000.00 executed by Pat H. Hood and payable to Republic National Bank of Dallas (Escrow Agent).

10. Contract of Sale dated February 8, 1971 between O. K. Super Markets, Inc. and Grand City Groceries, Inc.

11. Installment promissory note dated February 18, 1970 in the principal sum of \$25,000.00 executed by Grand City Groceries, Inc. and payable to Republic National Bank of Dallas (Escrow Agent).

12. Contract of Sale dated February 8, 1971 between O. K. Super Markets, Inc. and Charles W. Logan.

13. Installment promissory note dated February 8, 1971 in the principal sum of \$30,000.00 executed by Charles W. Logan payable to Republic National Bank of Dallas (Escrow Agent).

14. Judgment entered in Cause No. 96-5548-70 in the 96th Judicial District Court of Tarrant County, Texas on February 4, 1972.

15. Bill of Sale dated February 8, 1971 from O. K. Super Markets, Inc. to Pat H. Hood.

16. Bill of Sale dated February 8, 1971 from O. K. Super Markets, Inc. to Grand City Groceries, Inc.

17. Bill of Sale dated February 8, 1971 from O. K. Super Markets, Inc. to Charles W. Logan.

18. Memo from M. D. Kidwell dated 11/12/68.

19. Intercompany and office correspondence dated November 19, 1968 to Mr. W. E. Hartman from M. D. Kidwell.

20. Intercompany and office correspondence dated November 26, 1968 to Mr. W. E. Hartman from M. D. Kidwell.

21. Intercompany and office correspondence dated January 16, 1969 to Mr. W. E. Hartman from M. D. Kidwell and attachments.

B. Defendants' Exhibits

1. Financing Statement filed with Secretary of State on August 7, 1968 bearing number 206396.

2. Security Agreement dated February 12, 1969 wherein Republic National Bank of Dallas is bank and O. K. Super Markets, Inc. is debtor.

3. Financing Statement filed with Secretary of State on February 18, 1969 bearing number 254984.

4. Promissory note dated February 12, 1969 in the principal sum of \$300,000.00 executed by O. K. Super Markets, Inc. payable to the order of Republic National Bank with assignment to Small Business Administration attached.

5. Small Business Administration Application for Loan under Blanket Guaranty SBA Loan No. SBLG-ME-752,344-00-04-DAL dated January 8, 1969 and Blanket Loan Guaranty Agreement between Small Business Administration and Republic National Bank dated November 1, 1967.

6. Statement of account between Plaintiff and O. K. Super Markets, Inc. covering the period July 1, 1970 through January 15, 1971.

7. Assignment filed with Secretary of State of Texas on February 18, 1971.

8. Check from Republic National Bank to Plaintiff in the sum of \$24,893.10.

9. Loan authorization between Republic National Bank, O. K. Super Markets, Inc. and the Small Business Administration.

10. The following expert witnesses will be called by the parties:

None

11. A general statement of suggested instructions to the jury by the parties, respectively, are:

Not applicable. No party has requested trial by jury.

12. The following amendments to the pleadings are requested:

(1) Plaintiff requests leave of Court to amend its complaint filed herein by substituting for the presently attached Exhibit "E" a copy of the agreement between O. K. Super Markets, Inc. and the REPUBLIC NATIONAL BANK OF DALLAS approved as to form and substance by Small Business Administration and Plaintiff as actually executed (Plaintiff's Exhibit "7") and substituting for the following wording contained in paragraph IX thereof:

"Pending a resolution of the above-referred to cause of action No. 96-5548-70 filed in the 96th Judicial District Court of Tarrant County, Texas and to be paid over to the party or parties in the manner and amounts as finally determined to be legal and rightful,"

the words: "to be paid over to the party or parties entitled to same after due adjudication and/or mutual agreement between the parties thereto."

(2) Plaintiff further requests leave of the Court to file an answer to the intervening petition similar in substance to that filed by the Defendants.

(3) REPUBLIC NATIONAL BANK and Small Business Administration request leave of the Court to amend or interline (a) the tenth line contained in page 4 of its Original Answer to read as follows: "O. K. Super Markets, Inc. so that the Security Agreements and Financing Statements executed by", and (b) add to the last sentence in said paragraph the following: "The balance of said indebtedness being the sum of \$252,331.93 plus interest."

13. The following matters will aid in the disposition of the action:

None at this time.

14. The probable length of trial in this case is one-half (1/2) to one (1) day.

APPROVAL RECOMMENDED:

/s/ Vernon O. Teofan
VERNON O. TEOFAN
Attorney for Plaintiff

/s/ Frank Betancourt
FRANK BETANCOURT
Attorney for Defendant
REPUBLIC NATIONAL BANK OF DALLAS

/s/ Claude Brown
CLAUDE BROWN
Attorney for Defendant
UNITED STATES OF AMERICA

/s/ Lewis A. Jones
LEWIS A. JONES
Attorney for Intervenor
STATE OF TEXAS

/s/ Ted P. MacMaster
TED P. MACMASTER
Attorney for Intervenor
CITY OF DALLAS

APPROVED this 12th day of July, 1973.

/s/ Leo Brewster
United States District Judge

Set for 9:30 a.m., September 17, 1973.

/s/ Leo Brewster
Judge

\$ 27,000.00

FORT WORTH, TEXAS April 17, 1968

For value received, I, we, or either of us, jointly or severally, promise to pay to Kimbell Milling
Company d/b/a Kimbell Grocery Company or order, the
 sum of Twenty Seven Thousand & No/100 ----- DOLLARS

with interest at the rate of 6 1/2 per cent per annum, from Date, interest payable Monthly as it
 accrues, with both principal and interest payable at Fort Worth, Texas. All past due interest and principal shall bear
 interest from maturity at the rate of ten per cent per annum.

Payable on demand and if no demand be made, payable as follows:

Payable in monthly installments of \$1,000.00 principal, plus interest,
beginning May 17, 1968 and a like amount of principal, plus interest, on
the 17th of each succeeding month until paid in full both as to principal
and interest. The consideration for this note being an advance in goods,
wares and merchandise to be delivered between the dates of April 17, 1968
and May 15, 1968.

It is further agreed that if this note is placed in the hands of an attorney for collection or for the purpose of
 securing same, or if suit is brought thereon, or if same is collected through probate or Bankruptcy proceedings, the
 makers hereof will pay, in addition to the full amount due, a reasonable attorney's fee. (It is understood and agreed
 that failure to pay this note or any installment as above promised or any interest thereon when due, shall, at the
 election of the holder of said note, mature said note, and it shall at once come due and payable.) The sureties, endorsers
 and guarantors of this note, severally waive extension of time of payment, presentment and demand for payment, (and)
 protest and notice of protest for the non-payment of this note.

1903 So. Ervay

Dallas, Texas

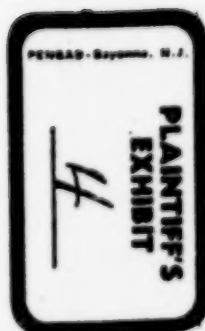
O. K. Supermarkets, Inc.

By: Donald E. Kimball

President

Form No. KG-7022

#2924



BILLS RECEIVABLE

HOUSE	FORT WORTH 4306		Page
Name O. K. SUPERMARKETS			
Address 1903 So. Ervay, Dallas, Texas		Trade Style	
Date April 17, 1968	Maturity Demand/Monthly	Int. 6 1/2 %	
C/M 27731	D/T	Other:	
Int. to 2-12-69	893.10	Paid to	
Int. to 4-4-35/100		Paid to	
Int. to		Paid to	

Note dated 1/17/68 -- \$27,000.00
 Payable in monthly installments of \$1,000.00 principal, plus interest, on beginning May 17, 1968 and a like amount of principal, plus interest, on the 17th of each succeeding month until paid in full both as to principal and interest. The consideration for this note being an advance in goods, wares and merchandise to be delivered between the dates of April 17, 1968 and May 15, 1968. Interest due with first payment -- \$146.26 and reduces \$5.42 each month thereafter.

APR 19 '68	27,000.00	27,000.00
MAY 24 '68	1,000.00	
MAY 24 '68	146.26	26,000.00
JUN 30 '68	1,000.00	
JUL 8 '68	140.84	25,000.00
JUL 22 '68	1,000.00	
JUL 22 '68	135.42	24,000.00
FEB 17 '69	24,000.00	
FEB 17 '69	893.10	.00

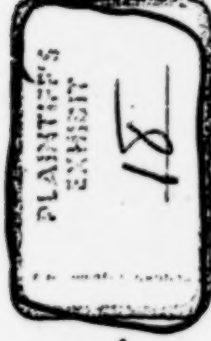


Wm. from

M. D. KIDWELL

OK, Dupont, etc
Dallas, Texas

San Antonio
Republic Natl Bank
Dallas, Tex
214--(79-5538



Your loan for \$300,000.00
has ask us to
guaranty our corporate
share of the loan - app. 15%

TO Mr. H. E. Hartman AT building DATE November 19, 1968
 FROM H. D. Kidwell AT building

RE: O K Super Markets, Inc.
 Dallas, Texas

Dear Bill:

As you know, these people have been in a bind recently due to the fact that they lost approximately \$100,000.00 during the boycott.

Application was made recently to the Small Business Administration for a seven-year loan in the amount of \$300,000.00 with the Republic National Bank of Dallas participating. It was our understanding that the Republic National Bank would furnish the money and the SBA would guarantee 90% of the loan. We have now been contacted by Mr. Don Davis of the Republic National Bank asking us, along with the two other major creditors, to guarantee our pro rata share of the loan, or approximately 15%, based on the amount of money that these people owe us at the present time.

We can see no advantage to our agreeing to guarantee this amount. We, of course, would receive payment of our account in full but we would have to release all of our security and we would have a contingent liability of 15% of the principal balance of this loan and for a period of seven years.

We will appreciate your thinking and your advice in the matter.

Yours truly,

H. D. Kidwell/bc
 Credit Department

11/19
no
What else for
there
is to do
is
OK

Bill Jackson
Called Chicago 11/6/68
It's better 11/6/68
See Reynolds

Plaintiff Kimbell's
 Exhibit 19

TO Mr. W. E. Hartman AT building
FROM W. D. Kiddell AT building

RE: O K Super Markets
Dallas, Texas

I have been trying to reach Mr. Harold Kindle for several days to make an appointment to talk with him and advise him that we could not guarantee his loan as requested. Mr. Kindle called me this morning and advised that their loan for \$300,000.00 has been approved. I asked Mr. Kindle what happened in regard to the bank's and the SBA's request for the guaranties. Mr. Kindle stated that their attorney and Mr. Earl Cabell went to see the officers of the bank and of the SBA and simply told them that this was ridiculous and if the creditors were willing to guarantee this amount of money they would not need the assistance of the bank or the SBA. Mr. Kindle said, apparently, the bank and the SBA simply dropped the matter of the guaranty and approved their loan without it. Mr. Kindle thinks that they will receive their money sometime next week.

Yours truly,

WDX

W. D. Kiddell/bc
Credit Department

Plaintiff Kimbell's
Exhibit 20

INTER COMPANY AND OFFICE CORRESPONDENCE

TO Mr. W. E. Hartmann DATE January 16, 1969
building
 AT AT
 FROM M. D. Kidwell building
 AT AT

RE: O K Super Markets
 Dallas, Texas

You will recall, recently these people told us that the SBA loan had been approved and they had decided to drop the matter of the Personal Guaranties. Now they tell us that it was true that the SBA had agreed to drop the matter of the Guaranty but the Republic National Bank did not.

Attached you will find a Personal Guaranty form which these people and the bank have requested that we sign and covering 4% of the outstanding balance of the loan. Our original liability, of course, will be \$12,000.00 and then this amount will reduce accordingly as the principal balance reduces. These people are also asking Cabell Dairies and United Wholesale to execute the same form which will mean that we and the other two creditors will guarantee 12% of the loan.

At the present time this account owes us a principal Note balance of \$24,000.00, interest in the amount of \$780.00 and \$13,000.00 past due on open account. Mr. Harold Kindle has requested that we allow him to pay the principal balance of the Note and the interest immediately upon receipt of the loan and then pay the open account balance in the amount of \$13,000.00 at the rate of \$200.00 per week and current purchases weekly.

The terms of this loan are six years at \$6,000.00 per month including interest. By obtaining this loan the O K Super Markets can pay us in full but we will have a contingent liability for a period of six years. Please advise as to your wishes.

Yours truly,

M. D. Kidwell/bh
 Credit Department

Attachment

1-17-69
 Mrs. Hartmann said "We like Can not
 get in to a new field of Contingent Liabilities
 Also, We want our account paid in full
 before we release our security."

GUARANTY
(Loan Guaranty Plan)In order to induce Republic National Bank of Dallas (Bank) to make a loan to, or renewal or extension thereof,to O. K. SUPERMARKETS, INC.

(Debtor), the undersigned hereby unconditionally guarantees to Bank, its successors and assigns and to the Small Business Administration (SBA) as its interest may appear, the due and punctual payment when due, whether by acceleration or otherwise, in accordance with the terms thereof, of the principal of and interest on and all other sums payable, or stated to be payable, with respect to the note of the

Debtor, made by the Debtor to Bank, dated ✓ 300,000.00, in the principal amount of \$ 300,000.00, with interest at the rate of 8 3/4 percent per annum. Such note, and the interest thereon and all other sums payable with respect thereto are hereinafter collectively called "Liabilities." As security for the performance of this guaranty the undersigned hereby mortgages, pledges, assigns, transfers and delivers to Bank certain collateral (if any), listed in the schedule on the reverse side hereof. The term "collateral" as used herein shall mean any funds, guaranties, agreements or other property or rights in property of any nature whatsoever, or the proceeds thereof, which may have been, are, or hereafter may be, mortgaged, pledged, assigned, transferred or delivered directly or indirectly by or on behalf of the Debtor or the undersigned or any other party to Bank or to the holder of the aforesaid note of the Debtor, or which may have been, are, or hereafter may be held by any party as trustee or otherwise, as security, whether immediate or underlying, for the performance of this guaranty or the payment of the Liabilities or any of them or any security therefor.

The undersigned waives any notice of the incurring by the Debtor at any time of any of the Liabilities, and waives any and all presentment, demand, protest or notice of dishonor, nonpayment, or other default with respect to any of the Liabilities and any obligation of any party at any time comprised in the collateral. The undersigned hereby grants to Bank full power, in its uncontrolled discretion and without notice to the undersigned, but subject to the provisions of any agreement between the Debtor or any other party and Bank at the time in force, to deal in any manner with the Liabilities and the collateral, including, but without limiting the generality of the foregoing, the following powers:

- (a) To modify or otherwise change any terms of all or any part of the Liabilities or the rate of interest thereon (but not to increase the principal amount of the note of the Debtor to Bank) to grant any extension or renewal thereof and any other indulgence with respect thereto, and to effect any release, compromise or settlement with respect thereto;
- (b) To enter into any agreement of forbearance with respect to all or any part of the Liabilities, or with respect to all or any part of the collateral, and to change the terms of any such agreement;
- (c) To forbear from calling for additional collateral to secure any of the Liabilities or to secure any obligation comprised in the collateral;
- (d) To consent to the substitution, exchange, or release of all or any part of the collateral, whether or not the collateral, if any, received by Bank upon any such substitution, exchange, or release shall be of the same or of a different character or value than the collateral surrendered by Bank;
- (e) In the event of the nonpayment when due, whether by acceleration or otherwise, of any of the Liabilities, or in the event of default in the performance of any obligation comprised in the collateral, to realize on the collateral or any part thereof, as a whole or in such parcels or subdivided interests as Bank may elect, at any public or private sale or sales, for cash or on credit or for future delivery, without demand, advertisement or notice of the time or place of sale or any adjournment thereof (the undersigned hereby waiving any such demand, advertisement and notice to the extent permitted by law), or by foreclosure or otherwise, or to forbear from realizing thereon, all as Bank in its uncontrolled discretion may deem proper, and to purchase all or any part of the collaterals for its own account at any such sale or foreclosure, such powers to be exercised only to the extent permitted by law.

The obligations of the undersigned hereunder shall not be released, discharged or in any way affected, nor shall the undersigned have any rights or recourse against Bank, by reason of any action Bank may take or omit to take under the foregoing powers.

In case the Debtor shall fail to pay all or any part of the Liabilities when due, whether by acceleration or otherwise, according to the terms of said note, the undersigned, immediately upon the written demand of Bank, will pay to Bank the amount due and unpaid by the Debtor as aforesaid, in like manner as if such amount constituted the direct and primary obligation of the undersigned. Bank shall not be required, prior to any such demand on, or payment by, the undersigned, to make any demand upon or pursue or exhaust any of its rights or remedies against the Debtor or others with respect to the payment of any of the Liabilities, or to pursue or exhaust any of its rights or remedies with respect to any part of the collateral. The undersigned shall have no right of subrogation whatsoever with respect to the Liabilities or the collateral unless and until Bank or SBA shall have received full payment of all the Liabilities.

The obligations of the undersigned hereunder, and the rights of Bank in the collateral, shall not be released, discharged or in any way affected, nor shall the undersigned have any rights against Bank by reason of the fact that any of the collateral may be in default at the time of acceptance thereof by Bank or later; nor by reason of the fact that a valid lien in any of the collateral may not be conveyed to, or created in favor of, Bank; nor by reason of the fact that any of the collateral may be subject to equities or defenses or claims in favor of others or may be invalid or defective in any way; nor by reason of the fact that any of the Liabilities may be invalid for any reason whatsoever; nor by reason of the fact that the value of any of the collateral, or the financial condition of the Debtor or of any obligor under or guarantor of any of the collateral, may not have been correctly estimated or may have changed or may hereafter change; nor by reason of any deterioration, waste, or loss by fire, theft, or otherwise of any of the collateral unless such deterioration, waste, or loss be caused by the willful act or willful failure to act of Bank.

The undersigned agrees to furnish Bank, or the holder of the aforesaid note of the Debtor, upon demand, but not more often than semiannually, so long as any part of the indebtedness under such note remains unpaid, a financial statement setting forth, in reasonable detail, the assets, liabilities, and net worth of the undersigned.

The undersigned acknowledges and understands that SBA has entered into, or will enter into, or will enter into, a Guaranty Agreement with Bank guaranteeing a portion of Debtor's Liabilities. The undersigned agrees that it is not a co-guarantor with SBA and shall have no right of contribution against SBA. The undersigned further agrees that all liability hereunder shall continue notwithstanding payment by SBA under its Guaranty Agreement to Bank.

The term "undersigned" as used in this agreement shall mean the signer or signers of this agreement, and such signers, if more than one, shall be jointly and severally liable hereunder. The undersigned further agrees that all liability hereunder shall continue notwithstanding the incapacity, lack of authority, death, or disability of any one or more of the undersigned, and that any failure by Bank or its assigns to file or enforce a claim against the estate of any of the undersigned shall not operate to release any other of the undersigned from liability hereunder. The failure of any other person to sign this guaranty shall not release or affect the liability of any signer hereof.

It is further agreed and understood that this Guaranty is limited to 4% of the outstanding balance of the loan.

ATTEST:

By ✓

President

Secretary

KIMBLE GROCERY COMPANY

NOTE.--Corporate guarantors must execute guaranty in corporate name, by duly authorized officer, and seal must be affixed and duly attested; partnership guarantors must execute guaranty in firm name, together with signature of a general partner. Formally executed guaranty is to be delivered at the time of disbursement of loan.

LIST ON REVERSE SIDE COLLATERAL SECURING THE GUARANTY

GPO 672-443

Wm. 1/10/10

M. D. KIDWELL

O.K. Super Markets
Dallas, Texas

Note \$ 24,000.00
Interest on Note 823.50

Open Account -
Current 10,622.75
Past due 13,000.00

Total owing 48,446.25

Will pay — 30,000.00
when loan is received 18,446.25

Less Current bal 10,622.75
7,823.50

Remaining old balance will be paid
in not more than 4 weeks and
current purchases weekly.

DATE February 12, 1969

PARTIES

REPUBLIC NATIONAL BANK OF DALLAS (BANK)

PACIFIC AND ERVAY STREETS, DALLAS, TEXAS

INFORMATION CONCERNING THIS SECURITY INTEREST MAY BE OBTAINED AT THE OFFICE OF THE BANK SHOWN ABOVE.

DEBTOR

O. K. SUPER MARKETS, INC.

ADDRESS (RESIDENCE - SHOW COUNTY, IF MAILING ADDRESS DIFFERENT. INSERT MAILING ADDRESS AS WELL.)

1403

1403 South Ervay Dallas, Texas 75215

B. AGREEMENT

Subject to the applicable terms of this security agreement, debtor grants to bank a security interest in the collateral to secure the payment of the obligation.

C. OBLIGATION

1. The following is the obligation secured by this agreement:

- a. All indebtedness, obligations, and liabilities of any kind of debtor to bank, now or hereafter existing, arising directly between debtor and bank or acquired outright, conditionally, or as collateral security from another by the bank, absolute or contingent, joint or several, secured or unsecured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, direct or indirect, and including, but not as a limitation upon any of the foregoing, any indebtedness, obligation, or liability to bank by debtor as a member of any partnership, syndicate, association or other group, whether incurred by the debtor as principal, surety, indorser, accommodation party or otherwise.
- b. All indebtedness, obligations, and liabilities of debtor to any person to the extent of any participation or interest therein created or acquired for such person, or granted to such person, by bank.
- c. All costs incurred by bank to obtain, preserve, and enforce this security interest, collect the obligation, and maintain and preserve the collateral, and including (but not limited to) taxes, assessments, insurance premiums, repairs, reasonable attorney's fees and legal expenses, feed, rent, storage costs, and expenses of sale.
- d. Interest on the above amounts, as agreed between bank and debtor, or if no such agreement, at the maximum rate permitted by law.
- e. All indebtedness, obligations, and liabilities of O. K. SUPER MARKETS, INC. to bank of the kinds described in this Item C, now existing or hereafter arising.

D. COLLATERAL

1. The security interest is granted in the following collateral:

a. Describe collateral. Include the following information:

- (1) For oil, gas or other minerals to be extracted, timber to be cut, and fixtures (goods to be affixed to real estate), describe real estate concerned and record owner of the land.
- (2) If debtor's residence is outside the state: give location of consumer goods.

All the debtor's machinery, ^{fixtures}equipment and inventory, now existing or hereafter acquired, all replacements and substitutes therefor, all accessions, attachments, additions and thereto, and all tools, parts and equipment now or hereafter added to or used in connection with such machinery and equipment, and all similar property hereafter acquired by debtor. Debtor not authorized to dispose of machinery and equipment. Collateral located at: 1403 S. Ervay, 4123 Oakland, 4630 Hatcher, 3805-7 E. Kiest Blvd, 3026 Grand Ave, 4121 Colonial, R-912 S. Corinth St, 2900 S. Lamar, 1903-19 S. Ervay, 5109 Bezar, 3227 Pennsylvania

b. All proceeds of, substitutes and replacements for, accessions, attachments, and other additions to, and tools, parts, and equipment used in connection with, the above property. However, such shall not be construed to mean that bank consents to any sale of such collateral.

c. All property similar to the above hereafter acquired by debtor.

d. The balance of every deposit account of debtor with bank and any other claim of the debtor against bank, now or hereafter existing and all money, instruments, securities, documents, chattel paper, credits, claims, demands and any other property rights and interests of debtor which at any time shall come into the possession or custody or under the control of the bank or any of its agents, associates or correspondents, for any purpose, and shall include the proceeds of any thereof. The bank shall be deemed to have possession of any of the collateral in transit to or set apart for it or any of its agents, associates or correspondents.

2. Classify goods under one or more of the following Uniform Commercial Code categories:

☐ Consumer goods☐ Equipment for business use☐ Inventory

3. ☐ If this block is checked, this is a purchase money security interest, and debtor will use funds advanced to purchase the collateral, or bank may disburse funds direct to the seller of the collateral, and to purchase insurance on the collateral.

4. If any of the collateral is accounts or contract rights, give the location of the office where the records concerning them are kept, if other than debtor's address in Item A: _____

ADDITIONAL TERMS ON BACK.

REPUBLIC NATIONAL BANK OF DALLAS

DEBTOR

O. K. SUPER MARKETS, INC.

Signature

SIGNATURE

SIGNATURE

President

TYPED NAME AND TITLE

TYPED NAME AND TITLE

BANK MUST SIGN IF THIS SECURITY AGREEMENT IS TO BE FILED AS A FINANCING STATEMENT.

Transferred and assigned to Small Business Administration, an agency and instrumentality of the United States Government, without recourse.

Republic National Bank of Dallas

12-36-70
Date

Name and Title

President

DEFENDANT'S
EXHIBIT

[illegible]

1. Ownership of Collateral. At the time debtor pledges, sells, assigns, or transfers to bank, or grants bank a security interest in any collateral or any interest therein, debtor shall be absolutely owner thereof and shall have the right to pledge, sell, assign or transfer the same or any interest therein adverse to bank.

- ## G. RIGHTS AND POWERS OF BANK

2. Bank may, in its discretion, before or after default, require debtor to give possession and control of the collateral to bank. In case an obligor delivers any instruments, securities, or chattels to the collateral, contact agent or other duly authorized person, or in any other manner, to obtain cash proceeds to release all or part of the obligation, the obligor shall, by such action, warrant and agree to take or cause to be taken all such steps as may be necessary to obtain, preserve, and enforce this security interest, and maintain and preserve the collateral, without notice to either, and add each of same to the obligation (but bank is under no duty to take any such action); release collateral in its possession to debtor, temporarily or otherwise; secure additional collateral; reject as unsatisfactory any property hereafter offered by debtor as collateral; set standards, from time to time to govern such figure; take control of after acquired collateral; designate, from time to time, a certain part of the collateral as the loan value and require debtor to maintain the obligation at or below such figure; take control of the funds generated by the collateral, such as cash dividends, interest, and proceeds or refunds from insurance, and use same to reduce any part of the obligation; vote any stock which is part of the collateral; and exercise all other rights which an owner of such stock may exercise. Bank may at any time in its discretion transfer any of the collateral or evidence thereof into its own name or that of its nominees and receive the proceeds therefrom and hold the same as security for the obligation, or apply the same therefrom. Bank may, but shall be under no duty to demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize upon collateral, in its own name or in the name of the debtor, as the bank may determine. Bank shall not be liable for the failure to collect any account or enforce any contract right or for any act or omission on the part of the bank, its officers, agents or employees, except willful misconduct. The foregoing rights and powers of bank shall be in addition to, and not a limitation upon, any rights and powers of bank given by law, custom, elsewhere by this agreement, or otherwise.

1. Effects of Default. Debtor shall be in default under this agreement upon the happening of any of the following events or conditions:

- a. Default in the timely payment or performance of any obligation, covenant or liability contained herein or secured hereby;
- b. Any warranty, representation or statement made or furnished to bank by or in behalf of debtor proves to have been false in any material respect when made or furnished;
- c. Any event which results in the acceleration of the maturity of the indebtedness of debtor to others under any indenture, agreement or understanding;

- m. Failure of debtor immediately to furnish and/or collateral satisfactory to bank upon the request of

under this agreement or otherwise. Bank may require debtor to assemble the collateral and make it available to bank at any place to be designated by the bank which is reasonably convenient to both parties. Unless the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, bank will give debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other intended disposition thereof is to be made. Expenses of retaining, holding, preparing for sale, storing, insuring, or the like shall include bank's reasonable attorney's fees and legal expenses. Bank shall be entitled to immediate possession of all books and records evidencing any contract rights covered by this agreement and shall have authority to enter upon any premises upon which the same may be situated and remove the same therefrom. Debtor shall be entitled to any surplus and shall be liable to bank for any deficiency arising from accounts, contract rights or chattel paper included in the collateral through the sale thereof to bank. If bank disposes of the collateral following default, the proceeds of such disposition available to satisfy the obligation shall be applied by bank to the obligation in such order and in such manner as bank in its discretion shall decide.

3. **Assignment of Collateral by Bank.** The bank may assign all or any part of the obligation and may assign, transfer, or deliver to any transferee of any of the obligation on any or all of the collateral, and thereafter shall be fully discharged from all responsibility with respect to the collateral so assigned, transferred or delivered. Such transferee shall be entitled with all the powers and rights of the bank hereunder with respect to such collateral, but the bank shall retain all rights and powers hereby given with respect to any of the collateral not so assigned or transferred to the transferee. No notice on the part of the bank in exercising any power or right shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right. No waiver by bank of any right hereunder or of any default by debtor shall be binding upon bank unless in writing, and no failure by bank to exercise any right hereunder or power or right of any default of debtor shall operate as a waiver of any other or further exercise of such right or of any further default.

4. **Parties Bound.** The rights of bank hereunder shall inure to the benefit of its successors and assigns. The terms of this agreement shall be binding upon the bank, successors, administrators, executors, and assigns of the parties hereto. All representations, warranties and agreements of debtor are joint and several if debtor is more than one and shall bind debtor's personal representatives, heirs, successors and assigns. This agreement shall constitute a continuing agreement applying to all future as well as existing transactions, whether or not of the character contemplated at the date of this agreement, and if all transactions between the bank and the debtor shall be at any time closed, shall be equally applicable to any new transactions thereafter, and shall continue in force notwithstanding any change in any partnership, partnership, or other relationship between the bank and the debtor, whether such change occurs through death, retirement or otherwise.

5. **Definitions.** Unless the context indicates otherwise, the Uniform Commercial Code apply to words and phrases in this agreement if the definitions conflict. Article 9

1. **Assignment of Collateral by Bank.** The bank may assign all or any part of the obligation, and may assign, transfer, or deliver to any transferee of any of the obligation on any or all of the collateral, and thereafter shall be fully discharged from all responsibility with respect to the collateral so assigned, transferred or delivered. Such transferee shall be entitled with all the power and rights of the bank hereunder with respect to such collateral, but the bank shall retain all rights and powers heretofore given with respect to any of the collateral not so assigned or transferred and no rights of the bank hereunder shall be terminated or impaired by this assignment, transfer or delivery. No notice to the transferee of this assignment, transfer or delivery shall be required, and no further exercise thereof or the exercise of any other power or right. No waiver by bank of any right hereunder or of any default by debtor shall be binding upon bank unless in writing, and no failure by bank to exercise any right hereunder or waiver of any default of debtor shall operate as a waiver of any other or further exercise of such right or of any further default.
2. **Parties Bound.** The rights of the bank hereunder shall inure to the benefit of its successors and assigns. The terms of this agreement shall be binding upon the bank, executors, administrators, successors, and assigns of the parties hereto. All representations, warranties and agreements of debtor are joint and several, and debtor is more than one and shall bind all other personal representatives of the estate of debtor, and assigns of debtor, and all other persons claiming through or by or under debtor, with respect to the collateral, and shall be bound by the terms of this agreement, and shall be bound to continue in force notwithstanding any change in the partnership daily basis, whether such change occurs through death, retirement or otherwise.
3. **Definitions.** Unless the context indicates otherwise, definitions in the Uniform Commercial Code apply to words and phrases in this agreement; if Code definitions conflict, Article 9 definitions apply.
4. **Notice.** Notice mailed postage prepaid to Debtor's address specified in the Uniform Commercial Code as to Debtor's most recent address as shown by notice of change on file with bank at least 5 days prior to the related action (or if the Uniform Commercial Code elsewhere specifies a longer period, such longer period) shall be deemed reasonable.
5. **Modifications.** No provision herein shall be modified or limited except by a written agreement expressly referring hereto and to the provision so modified or limited and signed by both parties to this agreement nor by course of conduct, usage or trade or by the law merchant.
6. **Entirety.** The enforceability of any provision of this agreement shall not affect the enforceability or validity of any other provision hereof.
7. **Severability.** If any provision of this agreement is held to be unenforceable or invalid, the remainder of this agreement shall survive and be enforceable.
8. **Execution.** This agreement shall be signed and delivered by Debtor to complete and sign one or more financing statements with respect to any collateral covered by this agreement and to file the same in any appropriate office or offices.
9. **Applicable Law.** This agreement shall be governed according to the laws of the State of Texas.
10. **Venue.** It is agreed that venue on any proceeding hereunder shall be in Dallas County, Texas.

Uniform Commercial Code—FINANCING STATEMENT—Form UCC-1 (Rev. 9-71)

THE ODEE COMPANY, PUBLISHERS, DALLAS, TEXAS 75201

IMPORTANT—Read instructions on back before filling out form

This Financing Statement is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code

1. Debtor(s) (List same first) and Mailing Address: 2. Secured Party(ies) Name and Address: 3. Maturity Date (if any):

O. K. Super Markets, Inc.
1403 S. Erway
Dallas, Texas 75215

Republic National Bank of
Pacific and Erway Streets
Dallas, Texas 75202

SECRETARY OF STATE
FEB. 18, 69
#254934

5. This Financing Statement covers the following types (or items) of collateral. (WARNING: If collateral is crops or fixtures, read instructions on back.)
All the debtor's machinery, equipment and inventory, now existing or hereafter acquired, all replacements and substitutes therefor, all accessions, attachments and additions thereto, and all tools, parts and equipment now or hereafter added to or used in connection with such machinery and equipment, and all similar property hereafter acquired by debtor. Debtor not authorized to dispose of machinery and equipment. Collateral located at: 1403 S. Erway, 4123 Oakland, 4630 Hatcher, 3305-7 E. Kiest Blvd., 3026 Grand Ave., 4121 Colonial, R-912 S. Corinth St., 2900 N. Lamar, 1903-19 S. Erway, 5109 Bexar, 3227 Pennsylvania.

Check ☒ if covered: ☒ Proceeds of collateral are also covered. ☒ Products of collateral are also covered. Number of additional sheets presented: _____

7. This Statement is filed without the Debtor's signature to perfect a security interest in collateral
(Please check ☐ already subject to a security interest in another jurisdiction when it was brought into this state, or appropriate box) ☐ which is proceeds of the original collateral described above in which a security interest was perfected, or ☐ already subject to a financing statement filed in another county, or ☐ already subject to a pre-code perfected security interest.

O. K. SUPER MARKETS, INC. REPUBLIC NATIONAL BANK OF DALLAS

By _____ Signature(s) of Debtor(s) By _____ Signature(s) of Secured Party(ies)

(1) Filing Officer Copy—Numerical

STANDARD FORM — FORM UCC-1 (REV. 9-71) APPROVED BY SECRETARY OF STATE OF TEXAS—THE ODEE COMPANY, DALLAS, TEXAS 75201

The Indebtedness shall immediately become due and payable, without notice or demand, upon the appointment of a receiver or liquidator, whether voluntary or involuntary, for the undersigned or for any of its property, or upon the filing of a petition by or against the undersigned under the provisions of any State insolvency law or under the provisions of the Bankruptcy Act of 1898, as amended, or upon the making by the undersigned of an assignment for the benefit of its creditors. Payee is authorized to declare all or any part of the Indebtedness immediately due and payable upon the happening of any of the following events:


(1) Failure to pay any part of the Indebtedness when due; (2) nonperformance by the undersigned of any agreement with, or any condition imposed by, Payee and Small Business Administration (hereinafter called "SBA"), or either of them, with respect to the Indebtedness; (3) Payee's discovery of the undersigned's failure in any application of the undersigned to Payee or SBA to disclose any fact deemed by Payee to be material or of the making thereof or in any of the said agreements, or in any affidavit or other documents submitted in connection with said application or the Indebtedness, of any misrepresentation by, on behalf of, or for the benefit of the undersigned; (4) the reorganization (other than a reorganization pursuant to any of the provisions of the Bankruptcy Act of 1898, as amended) or merger or consolidation of the undersigned (or the making of any agreement therefor) without the prior written consent of Payee; (5) the undersigned's failure duly to account, to Payee's satisfaction, at such time or times as Payee may require, for any of the Collateral, or proceeds thereof, coming into the control of the undersigned; or (6) the institution of any suit affecting the undersigned deemed by Payee to affect adversely its interest hereunder in the Collateral or otherwise. Payee's failure to exercise its rights under this paragraph shall not constitute a waiver thereof.

Upon the nonpayment of the Indebtedness, or any part thereof, when due, whether by acceleration or otherwise, Payee is empowered to sell, assign, and deliver the whole or any part of the Collateral at public or private sale, without demand, advertisement or notice of the time or place of sale or of any adjournment thereof, which are hereby expressly waived. After deducting all expenses incidental to or arising from such sale or sales, Payee may apply the residue of the proceeds thereof to the payment of the Indebtedness, as it shall deem proper, returning the excess, if any, to the undersigned. The undersigned hereby waives to the full extent permitted by law all right of redemption or appraisalment whether before or after sale. At any such sale Payee may become the purchaser of the whole or any part of the Collateral free from any right of redemption so far as permitted by law. Without limiting or affecting such power of sale, Payee is further empowered, upon the nonpayment of the Indebtedness, or any part thereof, when due, to collect or cause to be collected or otherwise, by suit or otherwise, and to surrender, compromise, release, Collateral, in the name of Payee or the undersigned or otherwise, by suit or otherwise, and to surrender, compromise, release, renew, extend, exchange, or substitute any item of the Collateral in transactions with the undersigned or any third party, irrespective of any assignment thereof by the undersigned, and without prior notice to or consent of the undersigned or any assignee. Whenever any item of the Collateral shall not be paid when due, or otherwise shall be in default, whether or not the Indebtedness, or any part thereof, has become due, Payee shall have the same rights and powers with respect to such item of the Collateral as are granted in respect thereof in this paragraph in case of nonpayment of the Indebtedness, or any part thereof, when due. None of the rights, remedies, privileges, or powers of Payee expressly provided for herein shall be exclusive, but each of them shall be cumulative with and in addition to every other right, remedy, privilege, and power now or hereafter existing in favor of Payee, whether at law or in equity, by statute or otherwise.

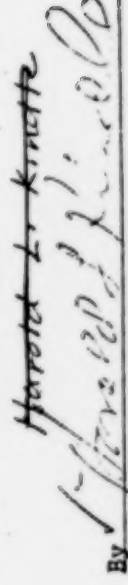
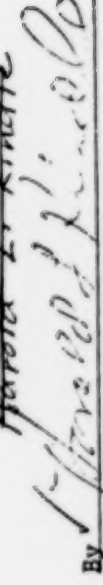
The undersigned agrees to take all necessary steps to administer, supervise, preserve, and protect the Collateral; and regardless of any action taken by Payee, there shall be no duty upon Payee in this respect. The undersigned shall pay all expenses of any nature, whether incurred in or out of court, and whether incurred before or after this Note shall become due at its maturity date or otherwise, including but not limited to reasonable attorney's fees and costs, which Payee may deem necessary or proper in connection with the satisfaction of the Indebtedness or the administration, supervision, preservation, protection (including, but not limited to, the maintenance of adequate insurance) of or the realization upon the Collateral. Payee is authorized to pay at any time and from time to time any or all of such expenses, add the amount of such payment to the amount of the Indebtedness, and charge interest thereon at the rate specified herein with respect to the principal amount of this Note.

The security rights of Payee and its assigns hereunder shall not be impaired by Payee's sale, hypothecation or rehypothecation of any note of the undersigned or any item of the Collateral, or by any indulgence, including but not limited to (a) any renewal, extension, or modification which Payee may grant with respect to the Indebtedness or any part thereof, or (b) any surrender, compromise, release, renewal, extension, exchange, or substitution which Payee may grant in respect of the Collateral, or (c) any indulgence granted in respect of any endorser, guarantor, or surety. The purchaser, assignee, transferee, or pledgee of this Note, the Collateral, any guaranty, and any other document (or any of them), sold, assigned, transferred, pledged, or repledged, shall forthwith become vested with and entitled to exercise all the powers and rights given by this Note and all applications of the undersigned to Payee or SBA, as if said purchaser, assignee, transferee, or pledgee were originally named as Payee in this Note and in said application or applications.

ATTEST:


Glen D. Kindle, Secretary

O. K. SUPERMARKETS, INC.


By 
Harold L. Kindle, President

Note.--Corporate applicants must execute Note, in corporate name, by duly authorized officer, and seal must be affixed and duly attested; partnership applicants must execute Note in firm name, together with signature of a general partner.

SMALL BUSINESS ADMINISTRATION
APPLICATION FOR LOAN UNDER BLANKET GUARANTY

Regional Director
Small Business Administration

SBA LOAN NO.
SNLGS-752,344-00-04-DAL

Pursuant to provisions of the Blanket Loan Guaranty Agreement executed between the lender and Small Business Administration, dated November 22, 1968, it is requested that the Loan described below be included under the provisions of the said Agreement and that SBA guarantee said Loan to the extent of 90.0 %.

NAME AND ADDRESS OF APPLICANT: (Include ZIP Code)	AMOUNT OF LOAN: \$ <u>300,000</u>
<u>O. K. Supermarkets, Inc.</u>	MATURITY: <u>7 years</u>
<u>1105 South Ervay</u>	INTEREST RATE: <u>8%</u>
<u>Dallas, Texas 75215</u>	

TELEPHONE: HA 8 - 6794

PRODUCT OR SERVICE FURNISHED:

Retail Groceries

PROPRIETORSHIP ☐ PARTNERSHIP ☐ CORPORATION ☒

PURPOSES OF LOAN: (List)	AMOUNT:
Debt payment	\$200,000
Working capital-inventory	30,000
" " -All other	70,000
	TOTAL \$ <u>300,000</u>

Additional information requested on the reverse side hereof is enclosed. Lender believes that there is reasonable assurance of repayment but is unable to make the loan unless SBA authorizes the guaranty requested herein. Lender hereby certifies that, to the best of its knowledge: (a) the applicant's principals are of good character; and (b) the fees of applicant's representatives, if any, as set forth in item 2 of "Applicant's Statement," are reasonable.

REPUBLIC NATIONAL BANK

By: [Signature] LENDER

Date: November 22, 1968 Assistant Vice President
TITLE

SMALL BUSINESS ADMINISTRATION
AUTHORIZATION OF LOAN GUARANTY

Your request for SBA Guaranty of 90 % of the above loan to be made and serviced by you is hereby approved subject to the loan conditions, if any, stated on the reverse side of this form under authority of Section 7(a) of the Small Business Act of 1958, as amended.

_____ and subject to the terms of the Blanket Loan Guaranty Agreement referred to above.

ADMINISTRATOR [Signature]
By: R. E. Griffin
Regional Director
TITLE
SMALL BUSINESS ADMINISTRATION

Date: January 0, 1969

(Instructions on Reverse)



ADDITIONAL LOAN CONDITIONS REQUIRED BY SBA

1. Security interest in machinery, equipment and fixtures and security interest in inventory.
2. The personal guaranty of Harold Lee Kindle, Glen D. Kindle, and Joe Elston on SBA Form 148B.
3. Guaranty of 4/3 of the outstanding balance by each of the following firms: Cabell's Dairies, United Wholesaler, and Kimble Grocery and Company.
4. Evidence satisfactory to bank and SBA that the plan as outlined in letter dated December 3, 1968, relative to ownership has been put into execution.
5. As additional security, pledge of all outstanding stock with voting rights.
6. Immediately after disbursement, Bank to furnish SBA the following instruments:
 - a. Copy of Note (SBA-154) signed and dated;
 - b. Original and first copy of Report of Transactions (SBA-172);
 - c. Signed copy of Bank's loan agreement, if one is prepared;
 - d. Copy of each Guaranty (SBA-148B) signed and dated; and
 - e. Copy of Bank's settlement sheet showing how funds were disbursed, if one is prepared.

INSTRUCTIONS

1. An original and two executed copies of this form are to be submitted to SBA. If the guaranty is approved, an executed copy will be returned showing that the guaranty is in effect.
2. Attach with the application:
 - (a) Applicant's Statement, SBA Form 528A and all attachments required by such Form.
 - (b) A copy, or summarization, of lender's appraisal of the collateral. SBA will assist in appraisals if requested.
 - (c) Pertinent credit information developed on applicant, noting any receivership or bankruptcy action.
 - (d) A copy of the loan terms lender intends imposing (e.g., proposed loan agreement or similar document).

GENERAL REQUIREMENTS

1. The first disbursement of the loan must be made not later than six months, and no disbursement shall be made later than 12 months, from the date of SBA's Authorization of Loan Guaranty (see obverse), unless such periods are extended by written consent of SBA.
2. Where loan funds will be used for construction purposes, and the contract or subcontracts are in excess of \$10,000, the Applicant must execute and submit with his application "Applicant's Agreement of Compliance," SBA Form 601, which is a non-discrimination agreement issued pursuant to Executive Order 11246.
3. The Government must regulate fees paid by Applicant to its attorney, accountant, or other representative. In this regard, please furnish Applicant SBA Form 394 explaining the policy.

SBA LOAN POLICY

SBA will not extend financial assistance:

- (1) If the funds are otherwise available on reasonable terms from normal lending sources or the personal resources of the principals.
- (2) If the loan is to (a) pay off a creditor or creditors of the applicant who are inadequately secured and in a position to sustain loss, (not applicable to Economic Opportunity Loans), (b) provide funds for distribution or payment to the principals of the applicant, or (c) replenish funds previously used for such purposes.
- (3) If the loan allows speculation in any kind of property.
- (4) If the applicant is a nonprofit enterprise.
- (5) To a consumer cooperative.
- (6) If the loan finances recreational or amusement facilities, unless the facilities contribute to the health or well-being of the general public.
- (7) If the applicant is a newspaper, magazine, book publishing company, radio broadcasting company or similar enterprise.
- (8) If any of the gross income of the applicant (or of any of its principal owners) is derived from gambling activities.
- (9) If the loan provides funds to an enterprise primarily engaged in lending or investments.
- (10) If the loan finances real property that is, or is to be, held for sale or investment; or finances an agricultural activity.
- (11) If the loan encourages monopoly or is inconsistent with the accepted standards of the American system of free competitive enterprise.
- (12) If the loan is used to relocate a business for other than sound business purposes.
- (13) Under some circumstances (except for Economic Opportunity Loans) to effect a change in ownership of a business.

NOTE: If you have any questions call or write the SBA Regional Office.

BLANKET LOAN GUARANTY AGREEMENT BETWEEN

AND THE SMALL BUSINESS ADMINISTRATION

An agreement, made this 1st day of November, 1967 by and between
Republic National Bank of Dallas (Lender)

and Small Business Administration, an agency of the United States Government (SBA):

WITNESSETH:

WHEREAS, it is the intention of the parties to establish a mutual arrangement and understanding for the making by Lender and the guaranteeing by SBA of loans to small business concerns in the furtherance of their respective interests and the interest of the small business economy as provided in the Small Business Act of 1958, as amended (SBA Act):

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties represent and agree, as follows:

1. **Application for Guaranty.** This agreement shall relate only to any new loan which has been approved by Lender and SBA in accordance with their respective credit policies and the conditions of guaranty set forth in the SBA Act and SBA Rules and Regulations. Any loan approved by Lender contingent upon SBA's guaranty may be referred to SBA for authorization upon the separate applications of Lender and the loan applicant.

2. **Approval of Guaranty.** SBA shall either authorize the guaranty by returning a copy of the application showing written approval of such authorization, or decline the guaranty by written notice to the Lender. If the application for any guaranty is not approved as submitted by the Lender but can be approved by modifying the written loan conditions in a manner acceptable to both Lender and SBA, the guaranty may be authorized by SBA. Any change thereafter in the authorized loan conditions shall be subject to prior written approval by SBA.

3. **Closing and Disbursement of Loans.** Lender shall close and disburse each loan in accordance with the terms and conditions upon which the loan and guaranty were approved. Lender shall cause to be executed a note and any additional instruments and take such other actions which shall, consistent with prudent closing practices, be required in order fully to protect or preserve the interests of Lender and SBA in the loan. Immediately after a loan is closed, Lender shall furnish SBA with a copy of the executed note and loan agreement. Upon its request, SBA shall also be entitled to examine copies of other security instruments or loan documents held by Lender which relate to loans made pursuant to this agreement.

4. **Loan Servicing.** Lender or SBA, whichever is the holder of any note, shall not, without the prior written consent of the other party: (a) purchase hazard or liability insurance with respect to any collateral; (b) make or consent to any transfer or assignment of any note or to any alteration in its terms or the terms of security instruments; (c) make or consent to any release, conveyance, substitution or exchange of any collateral having a value, as reasonably determined by the holder, which is more than 10 percent of the outstanding loan balance; (d) accelerate the maturity of the note; (e) sue upon the note, collateral or instrument; or (f) waive any claim against any borrower or guarantor, standby creditor, or other obligor arising out of any note or security instrument. All other servicing actions shall be the responsibility of the holder who shall follow accepted standards of loan servicing employed by prudent lenders generally.

5. **Quarterly Report of Disbursement and Repayment.** By the 10th day of the month following each calendar quarter, Lender shall furnish to SBA a report showing each such loan on which Lender made disbursement or on which borrower made payment on account of interest and/or principal during the preceding calendar quarter.

6. **Guaranty Charge.** Within 10 days after being billed therefor, Lender shall pay SBA for each calendar quarter, a guaranty fee computed at the rate of one-half percent ($1\frac{1}{2}\%$) per annum (per diem basis) of that part of the guaranteed percentage of unpaid principal balances of disbursed loans guaranteed hereunder. The guaranty fee payable hereunder shall not be added to any amount which a borrower is obligated to pay under a loan.

7. **Notice of Borrower's Default and Demand for Purchase.** In the event any borrower defaults upon the note or any security agreement, or fails to make any payment when due of principal or interest on the note, Lender shall notify SBA of such default in writing within 30 days after the happening or knowledge thereof, unless cured; such notice is a condition precedent to Lender's demand for purchase. In the event Lender desires to accelerate the indebtedness, request for the written consent of SBA may be made a part of that notice. If any borrower shall be in default and such default is not cured within 60 days after the happening thereof, Lender shall have the right to make demand in writing for the purchase by SBA of the guaranteed percentage of the amount then owing on such loan. The 60-day period may be waived if the parties agree that acceleration of the note is necessary at an earlier date.

8. **Purchase by SBA.** In making its written demand for SBA to purchase its guaranteed percentage of any loan hereunder, Lender shall thereby certify that the loan has been disbursed and served in compliance with this agreement and that the provisions of this agreement remain in full force and effect with respect to said loan. Within 20 days after receipt of Lender's demand, SBA shall pay to Lender the guaranteed percentage of the amount then owing on such loan (including appropriate adjustment for interest and charges) and Lender shall issue to SBA a participation certificate* evidencing SBA's interest. Lender shall hold the note, all the collateral thereto and all instruments in connection therewith; provided however that subsequent to the purchase by SBA of its guaranteed percentage in any such loan and upon written demand by SBA, Lender shall within 5 days after receipt of such demand transfer to SBA, without recourse, the note, collateral, and instruments for said loan and simultaneously therewith SBA shall issue to Lender a certificate of interest* evidencing Lender's interest retained in said loan.

9. **Fees or Commissions.** Lender shall not directly or indirectly charge or receive any bonus, fee, commission, or expense in any form in connection with the making or servicing of any such loan, except charges or expenses incurred, or for actual services rendered.

10. **Sharing of Repayment Proceeds.** Any and all repayments, security or guaranty of any nature, including but not limited to rights of setoff and counterclaims, which Lender or SBA jointly or severally, may at any time receive or have in any loan guaranteed hereunder, shall repay and secure the interests of Lender and SBA in the same proportion as such interests bear respectively to the entire unpaid balance of such guaranteed loan. In the event Lender makes any loan or advance to a borrower subsequent to a loan made under this guaranty agreement, Lender shall notify SBA of such loan or advance and, if circumstances require, enter into a written agreement with SBA providing for the application of collateral (or any moneys realized therefrom) to the respective loans in a manner satisfactory to the parties hereto.

11. **Payment of Expenses.** All reasonable expenses incurred by SBA or Lender which are not recoverable from borrower shall be shared ratably by SBA and Lender in accordance with their respective interests in any such loan.

12. **SBA Purchase Privilege.** Anytime any loan guaranteed hereunder shall be in default in payment for more than 90 days, SBA may at its option give written notice to the Lender that SBA will purchase its guaranteed percentage, or the loan in its entirety, 10 days after receipt of said notice by the Lender. Upon such purchase date, the transfer of the note and related instruments, without recourse, to SBA and of a certificate of interest to the Lender shall be simultaneously completed.

13. **Termination.** Either party hereto, by giving not less than 10 days prior written notice by certified mail to the other party, may terminate the provisions of this agreement; such termination shall not apply to any loan previously authorized by SBA hereunder. Lender may at any time prior to purchase by SBA terminate the provisions of this agreement as to any individual loan upon receipt of notice of termination by SBA. The provisions of this agreement shall be terminated in the case of any loan if demand for SBA to purchase is not made within 60 days following the stated maturity date of the note.

IN WITNESS WHEREOF, Lender has caused this agreement to be executed on its behalf by its duly authorized officer or officers and its corporate seal to be hereunto affixed, and Small Business Administration has caused this agreement to be executed on its behalf by its Regional Director, at its Dallas, Texas Office

(SEAL)

ATTEST:

William Frank Stevens

TITLE

Assistant Cashier

Republic National Bank of Dallas

LENDER

Charles H. Foster Jr.

TITLE

Senior Vice President

*Form to be furnished by SBA

SMALL BUSINESS ADMINISTRATION

P. Colton

TITLE

Regional Director

STATEMENT

O K Super Markets #3
Dallas, Texas
Account #17-009837

IN ACCOUNT WITH

Kimbell FORT WORTH Company
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 1'70			2,278.45
JUL 1'70	433.44		
JUL 1'70	576.82		
JUL 8'70	15.64		
JUL 8'70	494.57		
JUL 8'70	582.41		
JUL 15'70	719.43		
JUL 15'70	644.46		
JUL 22'70	7.86		
JUL 22'70	669.48		
JUL 22'70	560.62		
JUL 29'70	27.08		
JUL 29'70	667.20		
JUL 29'70	705.53		
AUG 5'70	26.81		
AUG 5'70	545.93		
AUG 5'70	547.04		
AUG 12'70	507.22		
AUG 12'70	913.71		
AUG 19'70	24.70		
AUG 19'70	597.10		
AUG 19'70	.06		
AUG 19'70	566.99		
AUG 31'70NT	6.67		
SEP 30'70NT	28.32		
NOV 11'70	7.97		
NOV 11'70	45.71		
NOV 11'70	5.84		
NOV 11'70	553.94		
OCT 31'70NT	28.53		
NOV 21'70	10.00		
NOV 30'70NT	23.54		
DEC 31'70NT	28.95		

CONSOLIDATION
STATEMENT

O K Super Markets, Inc.
1903 South Ervay Street
Dallas, Texas 75215

IN ACCOUNT WITH

Kimbell FORT WORTH Company
P. O. Box 1540
Fort Worth, Texas 76101
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
O K Super Market #3 Account #17-009837			\$ 3,543.88
O K Super Market #5 Account #17-009852			\$ 2,924.77
O K Super Market #8 Account #17-009878			\$ 3,094.40
O K Super Markets #11 Account #17-009936			\$ 522.42
O K Super Markets #1 Account #17-010017			\$ 1,737.45
O K Super Markets #2 Account #17-010025			\$ 2,435.10
O K Super Markets #14 Account #17-010587			\$ 4,000.46
TOTAL			\$18,258.57



STATEMENT

O K Super Markets #5
 1908 Dallas, Texas
 Account #17-009852

IN ACCOUNT WITH

Kimbell FORT WORTH Company
 WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 1'70			2,118.52°
JUL 1'70	67.59		
JUL 1'70	72.21		
JUL 1'70	1,003.26		
JUL 8'70	11.77		
JUL 8'70	1,095.27		
JUL 15'70	31.92		
JUL 15'70	148.42		
JUL 15'70	1,007.85		
JUL 29'70	33.58		
JUL 29'70	279.47		
JUL 29'70	879.15		
AUG 1'70	10.00		
AUG 5'70	33.46		
AUG 5'70	36.11		
AUG 5'70	979.45		
AUG 22'70	36.91		
AUG 22'70	402.48		
AUG 22'70	695.10		
AUG 12'70	39.42		
AUG 12'70	1,187.37		
AUG 19'70	21.78		
AUG 19'70	146.44		
AUG 19'70	874.42		
AUG 31'70 HT	6.46		
SEP 30'70 HT	25.41		
NOV 11'70	41.03		
NOV 11'70	76.95		
NOV 11'70	1,020.35		
OCT 31'70 HT	25.41		
NOV 18'70	50.25		
NOV 18'70	69.33		
NOV 19'70	820.54		

STATEMENT

O K Super Markets #3
 Dallas, Texas
 Account #17-009837

IN ACCOUNT WITH

Kimbell FORT WORTH Company
 WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 3'70		250.00-	
JUL 3'70		1,185.76-	
JUL 9'70		21.02-	
JUL 10'70		1,080.63-	
JUL 13'70		14.30-	
JUL 17'70		1,021.87-	
JUL 20'70		14.30-	
JUL 21'70		3.61-	
JUL 21'70		6.45-	
JUL 24'70		1,264.03-	
JUL 29'70		5.13-	
JUL 29'70		25.27-	
JUL 31'70		1,010.25-	
JUN 27'70		7.22-	
AUG 7'70		250.00-	
AUG 7'70		1,092.62-	
AUG 10'70		6.13-	
AUG 13'70		68.59-	
AUG 14'70		1,363.89-	
NOV 11'70		617.01-	
JAN 15'71			3,543.88°

STATEMENT

O K Super Markets #5
1222 Dallas, Texas
Account #17-009852

IN ACCOUNT WITH

Kimbell FORT WORTH Company
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 3'70		1,103.98-	
JUL 3'70		25.77-	
JUL 10'70		1,328.08-	
JUL 13'70		4.94-	
JUL 17'70		1,273.22-	
JUL 20'70		31.93-	
JUL 24'70		844.93-	
JUL 25'70		40.50-	
JUL 29'70		2.19-	
JUL 31'70		1,143.06-	
JUN 27'70		7.32-	
AUG 7'70		1,107.04-	
AUG 10'70		5.80-	
AUG 13'70		25.70-	
AUG 14'70		1,188.19-	
AUG 19'70		2.77-	
AUG 26'70		8.64-	
AUG 29'70		13.74-	
NOV 11'70		1,138.33-	
NOV 19'70		1,050.00-	
NOV 21'70		9.00-	
NOV 24'70		41.52-	
DEC 2'70		1,101.59-	
DEC 11'70		1,053.09-	
DEC 17'70		3.54-	
DEC 16'70		1,188.68-	
JAN 2'71		.41-	
JAN 6'71		45.05-	

JAN 6'71

2,924.77°

STATEMENT

O K Super Markets #5
1222 Dallas, Texas
Account #17-009852

IN ACCOUNT WITH

Kimbell FORT WORTH Company
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
DEC 2'70		54.21	
DEC 2'70		1,006.86	
DEC 2'70		40.52	
DEC 9'70		81.50	
DEC 9'70		83.57	
DEC 9'70		888.02	
NOV 30'70NT		6.88	
DEC 16'70		52.79	
DEC 16'70		46.12	
DEC 16'70		1,089.77	
DEC 31'70NT		5.83	

EXHIBIT A

STATEMENT

O K Super Markets #8
Dallas, Texas
Account #17-009878

IN ACCOUNT WITH

Kimbell — FORT WORTH — Company
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
SEP 19'70	30.00		
SEP 30'70NT	24.58		
OCT 31'70:NT	24.79		
NOV 30'70NT	24.99		
DEC 31'70NT	25.20		

STATEMENT

O K Super Markets #8
Dallas, Texas
Account #17-009878

IN ACCOUNT WITH

Kimbell — FORT WORTH — Company
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 1'70			1,569.85°
JUL 1'70	21.61		
JUL 1'70	163.81		
JUL 1'70	606.41		
JUL 8'70	138.43		
JUL 8'70	629.54		
JUL 8'70	5.07		
JUL 15'70	160.50		
JUL 15'70	608.62		
JUL 22'70	16.65		
JUL 22'70	178.05		
JUL 22'70	3.63		
JUL 22'70	600.64		
JUL 29'70	5.18		
JUL 29'70	174.86		
JUL 29'70	10.90		
JUL 29'70	744.04		
AUG 1'70	50.00		
AUG 5'70	13.80		
AUG 5'70	163.52		
AUG 5'70	10.12		
AUG 5'70	608.35		
AUG 12'70	6.92		
AUG 12'70	21.63		
AUG 12'70	174.84		
AUG 12'70	11.48		
AUG 12'70	648.35		
AUG 19'70	16.84		
AUG 19'70	174.46		
AUG 19'70	20.50		
AUG 19'70	520.34		
AUG 31'70:NT	11.25		

STATEMENT

O K Super Markets #11
Dallas, Texas
Account #17-009936

IN ACCOUNT WITH

Kimbell FORT WORTH Company
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 1'70			2,461.49*
JUL 1'70	20.76		
JUL 1'70	422.73		
JUL 8'70	26.75		
JUL 8'70	630.66		
JUL 15'70	577.66		
JUL 22'70	19.22		
JUL 22'70	768.14		
JUL 29'70	35.42		
JUL 29'70	1,198.88		
AUG 1'70	50.00		
AUG 5'70	24.74		
AUG 5'70	300.39		
AUG 12'70	27.08		
AUG 12'70	655.62		
AUG 19'70	583.34		
AUG 31'70NT	2.50		
SEP 19'70	30.00		
SEP 30'70NT	13.12		
OCT 31'70NT	13.33		
DEC 4'70	250.00		
NOV 30'70NT	8.13		
DEC 23'70	125.00		
DEC 31'70NT	4.17		

STATEMENT

O K Super Markets #8
Dallas, Texas
Account #17-009978

IN ACCOUNT WITH

Kimbell FORT WORTH Company
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 3'70		758.10-	
JUL 3'70		15.59-	
JUL 10'70		516.53-	
JUL 11'70		9.00-	
JUL 13'70		2.41-	
JUL 17'70		667.28-	
JUL 20'70		24.95-	
JUL 24'70		739.09-	
JUL 25'70		9.00-	
JUL 31'70		791.83-	
JUN 27'70		4.69-	
AUG 5'70		773.04-	
AUG 10'70		20.02-	
AUG 13'70		6.20-	
AUG 14'70		769.12-	
AUG 19'70		18.52-	
JAN 15'71			3,094.40

STATEMENT

O K Super Market #2
Dallas, Texas
Account #17-010025

IN ACCOUNT WITH

Kimbell FORT WORTH Company
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 1'70			1,978.77•
JUL 1'70	641.98		
JUL 8'70	29.83		
JUL 8'70	846.47		
JUL 15'70	24.19		
JUL 15'70	637.92		
JUL 22'70	554.89		
JUL 29'70	546.49		
AUG 1'70	50.00		
AUG 5'70	33.89		
AUG 5'70	540.05		
AUG 12'70	10.03		
AUG 12'70	767.03		
AUG 19'70	31.05		
AUG 19'70	699.34		
AUG 31'70NT	6.67		
SEP 19'70	40.00		
SEP 29'70NT	10.83		
OCT 31'70NT	19.58		
NOV 30'70	19.79		
DEC 31'70	19.79		

STATEMENT

O K Super Markets #1
Dallas, Texas
Account #17-010017

IN ACCOUNT WITH

Kimbell FORT WORTH Company
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 3'70		734.05-	
JUL 3'70		24.59-	
JUL 10'70		732.51-	
JUL 11'70		1.24-	
JUL 13'70		5.80-	
JUL 13'70		4.60-	
JUL 17'70		808.20-	
JUL 20'70		4.60-	
JUL 20'70		19.30-	
JUL 24'70		798.54-	
JUL 31'70		797.15-	
JUN 27'70		5.20-	
AUG 7'70		797.74-	
AUG 10'70		5.13-	
AUG 13'70		13.33-	
AUG 14'70		753.65-	
AUG 26'70		8.95-	
OCT 1'70		100.00-	
NOV 11'70		780.74-	
NOV 24'70		45.94-	
NOV 24'70		11.95-	
DEC 2'70		649.50-	
DEC 16'70		918.06-	
DEC 18'70		13.52-	

JAN 15'71

1,737.45

STATEMENT

O K Super Markets #1
Dallas, Texas
Account #17-010017

IN ACCOUNT WITH

Kimbell FORT WORTH Company

WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 1'70			1,297.03•
JUL 1'70	29.44		
JUL 1'70	767.71		
JUL 8'70	19.31		
JUL 8'70	742.43		
JUL 11'70	36.00		
JUL 15'70	33.94		
JUL 15'70	719.72		
JUL 22'70	32.19		
JUL 22'70	541.46		
JUL 29'70	634.01		
JUL 29'70	5.14		
JUL 29'70	7.83		
AUG 1'70	50.00		
AUG 5'70	10.38		
AUG 5'70	682.32		
AUG 12'70	26.12		
AUG 12'70	744.48		
AUG 19'70	33.37		
AUG 19'70	901.18		
SEP 19'70	40.00		
SEP 30'70NT	15.21		
NOV 11'70	42.02		
NOV 11'70	8.82		
NOV 11'70	52.46		
NOV 11'70	693.08		
OCT 31'70NT	14.37		
NOV 21'70	10.00		
DEC 2'70	16.40		
DEC 2'70	53.40		
DEC 2'70	579.70		
NOV 30'70NT	7.50		
DEC 16'70	67.41		
			823.23

DEC 16 '70

STATEMENT

O K Super Markets #11
Dallas, Texas
Account #17-009936

IN ACCOUNT WITH

Kimbell FORT WORTH Company

WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 3'70		526.66-	
JUL 9'70		7.84-	
JUL 10'70		519.83-	
JUL 10'70		1,178.67-	
JUL 10'70		250.00-	
JUL 17'70		795.64-	
JUL 17'70		250.00-	
JUL 17'70		3.13-	
JUL 24'70		729.22-	
JUL 31'70		443.49-	
JUN 27'70		4.01-	
AUG 7'70		657.41-	
AUG 10'70		223.00-	
AUG 12'70		577.66-	
AUG 19'70		35.65-	
AUG 19'70		2.34-	
AUG 19'70		8.85-	
AUG 25'70		13.30-	
NOV 3'70		250.00-	
NOV 10'70		125.00-	
NOV 19'70		125.00-	
NOV 25'70		125.00-	
DEC 1'70		125.00-	
DEC 8'70		125.00-	
DEC 16'70		375.00-	
DEC 31'70		125.00-	
JAN 13'71		125.00-	

JAN 15'71

522.48

STATEMENT

O K Super Markets #14
Dallas, Texas
Account #17-010587

IN ACCOUNT WITH

Kimbell FORT WORTH Company
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 1'70			2,188.43•
JUL 1'70	1,165.20		
JUL 8'70	7.85		
JUL 8'70	996.30		
JUL 15'70	58.31		
JUL 15'70	1,314.38		
JUL 22'70	52.32		
JUL 22'70	1,160.85		
JUL 29'70	15.46		
JUL 29'70	1,082.08		
AUG 5'70	7.72		
AUG 5'70	60.98		
AUG 5'70	1,194.65		
AUG 12'70	24.68		
AUG 12'70	1,200.95		
AUG 19'70	42.61		
AUG 19'70	935.30		
AUG 31'70NT	14.79		
SEP 30'70NT	33.12		
NOV 11'70	53.63		
NOV 11'70	69.25		
NOV 11'70	1,641.04		
OCT 31'70NT	33.32		
NOV 18'70	15.92		
NOV 18'70	27.21		
NOV 18'70	1,265.89		
DEC 2'70	55.97		
DEC 2'70	1,292.67		
DEC 2'70	25.07		
DEC 9'70	56.98		
DEC 9'70	52.50		
DEC 9'70	938.08		
DEC 11'70	360.75		

STATEMENT

O K Super Market #2
Dallas, Texas
Account #17-010025

IN ACCOUNT WITH

Kimbell FORT WORTH Company
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 3'70		559.10-	
JUL 9'70		13.48-	
JUL 10'70		481.16-	
JUL 13'70		18.18-	
JUL 17'70		685.02-	
JUL 21'70		29.77-	
JUL 24'70		250.00-	
JUL 24'70		595.02-	
JUL 31'70		250.00-	
JUL 31'70		641.98-	
JUN 27'70		4.37-	
AUG 5'70		876.30-	
AUG 14'70		662.11-	
JAN 15'71			2,442.11•
AUG 25'70		6.92-	
JAN 15'71			2,435.19•

CONSOLIDATION STATEMENT

O K Super Markets, Inc.
1903 South Ervay Street
Dallas, Texas 75215

IN ACCOUNT WITH

Kimbell FORT WORTH Company

P. O. Box 1540
Fort Worth, Texas 76101
WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
O K Super Market #3 Account #17-009837			\$ 3,543.88
O K Super Market #5 Account #17-009852			\$ 2,924.77
O K Super Market #8 Account #17-009878			\$ 3,094.40
O K Super Markets #11 Account #17-009936			\$ 522.42
O K Super Markets #1 Account #17-010017			\$ 1,737.45
O K Super Markets #2 Account #17-010025			\$ 2,435.19
O K Super Markets #14 Account #17-010587			\$ 4,000.46
TOTAL			\$18,258.57

STATEMENT

O K Super Markets #14
Dallas, Texas
Account #17-010587

IN ACCOUNT WITH

Kimbell FORT WORTH Company

WHOLESALE GROCERS

	DEBIT	CREDIT	BALANCE
JUL 3'70		1,067.55-	
JUL 9'70		63.77-	
JUL 11'70		13.50-	
JUL 13'70		24.51-	
JUL 17'70		1,059.21-	
JUL 24'70		1,408.73-	
JUL 25'70		7.85-	
JUL 29'70		25.14-	
JUL 31'70		1,165.20-	
JUN 27'70		7.65-	
AUG 4'70		5.80-	
AUG 7'70		1,004.15-	
AUG 14'70		1,372.69-	
AUG 14'70		250.00-	
AUG 19'70		30.73-	
AUG 22'70		4.50-	
NOV 11'70		1,763.92-	
NOV 19'70		1,350.00-	
DEC 2'70		1,348.91-	
DEC 11'70		1,446.91-	
DEC 16'70		1,649.99-	
DEC 17'70		5.36-	
DEC 17'70		4.58-	
JAN 6'70		47.40-	
DEC 31'70NT	7.92		

JAN 15'71

4,000.75•

10. STATEMENT is presented to filing officer for filing pursuant to the Uniform Commercial Code 1. Debtor(s) (last name first) and mailing address: <div style="text-align: center;"> O.K. Super Markets, Inc. 1403 S. Ervay Dallas, Texas 75215 </div>		2. Secured Party(ies) Name and address: <div style="text-align: center;"> Republic National Bank Pacific & Ervay Streets Dallas, Texas 75222 </div>		3. Maturity Date (if any): <div style="text-align: center;"> SECRETARY OF STATE FILED 8:30 AM </div>		4. For Filing Officer (Date, Time, Name, and Filing Office): <div style="text-align: center;"> SECRETARY OF STATE FILED 8:30 AM </div>	
This statement refers to original financing Statement No. 254984				Date Filed Feb. 18 1969			
5. Assignment <input type="checkbox"/> The secured party of record has assigned his interest in the following collateral to 6. Continuation <input type="checkbox"/> The original financing statement is still effective 7. Termination <input type="checkbox"/> The secured party of record no longer claims a security interest under the Financing Statement 8. Partial Release <input type="checkbox"/> The secured party of record releases the following collateral: 9. Amendment <input type="checkbox"/> The Financing Statement is amended as set forth below:		1309 Main St., Dallas, Texas 75202 Assigned to: Small Business Administration/ All of debtor's machinery, fixtures, and inventory, now existing or hereafter acquired, all replacements and substitutes therefor, all accessions, attachments and additions thereto, and all tools, parts and equipment now or hereafter added to or used in connection with such machinery and equipment, and all similar property hereafter acquired by debtor. Debtor not authorized to dispose of machinery and equipment. Collateral located at: 1403 S. Ervay,-----continued----- <div style="text-align: right;">(FOLD HERE)</div>					
Republic National Bank of Dallas				Republic National Bank of Dallas			
By _____ Signature(s) of Debtor(s)		By <u>1 (CONTINUED ON REVERSE PAGE)</u> _____ Signature(s) of Secured Party(ies)					

(2) FILING OFFICER COPY - ACKNOWLEDGEMENT
 STANDARD FORM - FORM UCC-3 — Approved by Secretary of State of Texas - Moore Business Forms, Inc., Denton, Texas

This STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code 1 To be filed (and those facts) and making subject:		2 General Part (and those facts) and - 44 are		3 Maturity Date (if any): 4 For Filing Officer (Date, Time, Number and Filing Office)	
O.K. Super Markets, Inc. 1403 S. Ervay Dallas, Texas 75215		Republic National Bank Pacific & Ervay Streets Dallas, Texas 75222		SECRETARY OF STATE FILED 8:30 AM JAN. 21 '71	
This statement refers to original financing Statement No. 254984		Date Filed Feb 19 1969		5 Amendment The financing statement is amended as set forth below.	
5 X Continuation The original financing statement is still effective.		6 Assignment The secured party of record has assigned his interest in the following collateral to:		7 Partial Release The secured party of record releases the following collateral:	
8 Termination The secured party of record no longer claims a security interest under the Financing Statement.		9 Cancellation The secured party of record no longer claims a security interest under the Financing Statement.		10 E Amendment The financing statement is amended as set forth below.	
<p style="text-align: center;">-----Continuation----- of Assignment to Small Business Administration 1309 Main Street, Dallas, Texas 75202</p> <p style="text-align: center;">6123 Oakland, n4630 Hatcher, 3805-7 E. Kiest Blvd., 3026 Grand Ave., 4121 Colonial, 912 S. Corinth St., 2900 S. Lamar, 1903-19 S. Ervay, 5109 Bexar, 3227 Pennsylvania</p>					
(FOLD HERE)					
By _____ Signature(s) of Debtor(s)		Republic National Bank of Dallas (CONTINUED ON NEXT PAGE) By _____ Signature(s) of Secured Party(ies)			

(2) FILING OFFICER COPY - ACKNOWLEDGEMENT

STANDARD FORM - FORM UCC-3 — Approved by Secretary of State of Texas - Moore Business Forms, Inc., Denton, Texas

DEFENDANT'S
EXHIBIT
8

Oliver H. Anderson

REPUBLIC NATIONAL BANK OF DALLAS
DALLAS, TEXAS

PURCHASER: O K SUPER MARKETS INC.

PAY TO THE ORDER OF: KINGBILLS GROCERY / O K SUPER MARKETS, INC.

REPUBLIC NAT'L BANK

CASHIER'S CHECK

1513863

FEB 12 1969

\$ 24,893.10

24893

DALLAS, TEXAS

1513863 1000000621 480 783 9 0002489310

O. K. Supermarkets Inc.

David D. Kimball

KIMBALL'S GROCERY

BY *C. G. Oliver*

O. T. Oliver

FOR DEPOSIT ONLY IN
THE FORT WORTH NATIONAL BANK

KIMBALL GROCERY COMPANY

000103

PAY AMOUNT \$4.42
NO. 17 FORT WORTH NATIONAL BANK
FT. WORTH, TEXAS

FEB 19 69 00017749

REPUBLIC NATIONAL BANK OF DALLAS 3 3 3
 DALLAS, TEXAS 69052 CI 0333

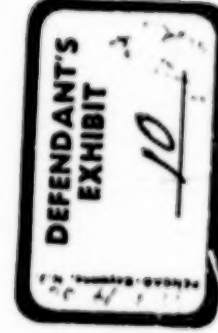
PURCHASE O K SUPER MARKET
 PAY TO THE ORDER OF ROBERT S. AND O K S.
 FEB 27 1969

1513864
 FEB 12 1969
 \$3,073.39

REPUBLIC NATIONAL BANK OF DALLAS
 3262
 FEB 27 1969
 3073.39 AND 39 CTS

TAX 1-75-1211010
 CASHIER'S CHECK

AUTHORIZED SIGNATURE
 1513864 111000621 480783191 0000307339



O. K. Supermarkets

Wm. K. Smith

0 7

FEB

PAID TO THE ORDER OF
JESSE JAMES C. J.
STATE TREASURER OF TEXAS
AUSTIN, TEXAS

RECEIVED
COUNTY CLERK
JAN 20 1969

NOT RECORDED
JAN 20 1969

02 9347

02 9347

02 9347

FEB 20 1969

FEB

69

FEB 20 1969

FEB

TESTIMONY OF HAROLD KINDLE

• • • •

[44]

HAROLD KINDLE

having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, [45] did testify as follows:

DIRECT EXAMINATION

BY MR. CABANISS:

Q. Would you state your name, please?

A. Yes, it is Harold Kindle.

Q. All right.

How are you employed, Mr. Kindle?

A. I'm in the real estate business.

Q. How long have you been in the real estate business, Mr. Kindle?

A. Two years.

Q. Prior to that time how were you employed?

A. I was President of O. K. Supermarkets.

Q. And for what period of time, or what general dates, were you President of O. K. Supermarkets?

A. I was President from about '68 to '71.

Q. And prior to 1968, were you employed by O. K. Supermarkets?

A. Yes, sir.

Q. In some other capacity?

A. Yes, sir, I was Vice-President.

Q. For what time, or approximately what dates, [46] were you Vice-President?

A. From about 1956 until 1961.

Q. All right.

Were you active in the management of O. K. Supermarkets during that period covered by your being Vice-President?

A. Yes, sir.

Q. Are you familiar with the various transactions which are the basis for a lawsuit being tried before the Court today?

A. Yes, sir.

Q. Initially, I would like to direct your attention to two of the Plaintiff's Exhibits which have been placed in evidence, these being the Security Agreements; the first one dated August of 1966, and the second April of 1968, and a third in November of 1968.

Are you familiar with each of these three Security Agreements with Kimbell Foods?

A. I'm not sure that I am familiar with the November statement—or, the agreement of '68.

Q. Are you familiar with the other two, August of 1966 and April of 1968, the Security Agreements?

A. Yes, sir.

[47] Q. All right.

Could you tell me what the occasion was for the August, 1966, Security Agreement being entered into?

A. Yes, sir. We were expanding—

Q. (interrupting) Pardon me. When you use the word "we" you ought to identify specifically who you are referring to.

A. Okay. O. K. Supermarkets was expanding and Kimbell assisted us in loaning some money to open up a new store.

Q. Do you remember the sum of money involved?

A. In the twenty thousand range.

Q. I believe the Agreement states a note of \$20,000.00.

Now, in what manner was the proceeds from that note, or that sum, utilized by O. K. Supermarkets in opening this store?

A. It was considered as an opening order of merchandise, as well as—in order to place some capital up for other expenditures. They extended us that much credit.

Q. At this time, in 1966, was Kimbell Foods serving as a principal wholesaler in supplying O. K. Supermarkets with inventory?

[48] A. Yes, sir.

Q. By reason of the negotiations as a result of this note and Security Agreement being executed, are you indicating that there was a delay in payment of your account which enabled you to use the current cash flow for purposes of this expansion?

A. Yes, sir, because normally that would cover more than the opening inventory. It is for opening inventory as well as other capital. An opening inventory wouldn't usually run, say, \$20,000.00 at one time.

Q. In the absence of having executed this note and Security Agreement would you have been obligated to have been making payments to Kimbell Foods which would have been utilizing your cash flow at that time?

A. Yes.

Q. With reference to the April, 1968, Agreement, I believe that this states that it is securing a \$27,000.00 note. Will you state what the situation was at the time of that April, 1968, Agreement?

A. Yes, sir. We had—

Q. (interrupting) Again, when you refer to [49] "we", who do you refer to?

A. O. K. Supermarkets had stopped buying from Kimbells for about six or nine months, and we had gone to Associated Groceries, and that didn't work out too well so we made an agreement to borrow enough money from Kimbells—or enough merchandise—so that we could pay A. G. We had financed some equipment at A. G., as well as the store [sic], and they had advanced us the money so we could pay A. G. all their indebtedness and start buying from Kimbells again.

Q. Was there actually cash outlay, or was this, too, an arrangement where you were able to delay paying on your account with Kimbell and use your cash flow of money for the purpose of paying off the A. G. account?

A. Yes. It was not a cash outlay of money, it was the credit of merchandise.

Q. But was it the same purpose as the earlier transaction to enable you to utilize the current cash income—

A. (interrupting) Yes, sir.

Q. (continuing)—without having to pay on the Kimbell account?

A. Yes.

[50] Q. Now, at the time that these two Security Agreements were entered into by O. K. Supermarkets, the one in August of 1966 and the one in April of 1968, did you intend that O. K. Supermarkets—did O. K. Supermarkets intend that those Security Agreements would cover all other advances and open accounts that existed between you and Kimbell Foods?

MR. VICKERS [Counsel for Plaintiff, Kimbell Foods]: May it please the Court, we would object to the attempt to vary the terms of the Agreement itself. There have been no pleadings in this case that would indicate any trial order or anything that would allow the parties to introduce oral agreements that vary the written Agreement.

THE COURT: Well, this being a non-jury case, I'll overrule the objection.

BY MR. CABANISS:

Q. You may proceed to answer the question, Mr. Kindle.

A. Well, I considered the 1966 Agreement a thing of the past from the 1968 Agreement. I felt like it was, you know, a new beginning, and [51] since we intended to pay the full amount—I realize it was a demand note and they could demand it at any time they wanted to, but we had had a good relationship so it was of no real concern. I didn't stop and ponder about, well, should I do this, or should we do this—O. K. Supermarkets.

Q. All right.

I might address your attention to the fact that there was language in each of these Security Agreements, both the one in August of 1966 and the one in April of 1968, which stated that the Security Agreement covered all indebtedness as well as the specific note that was identified.

Now, with reference to that latter language, I would inquire whether it was your intention that the Security

Agreement would cover from then on advances in the open account, between the two of them?

A. There again, there was not any specific instruction—on this question I mean—about which agreement would cover which. I felt like we signed a new statement in '68, and everything that had transpired in the past was history. I felt like that any monies expended on either one [52] of those, without an abrupt halt and then a start over again, would be—that '66 would be history now, and then when the '68 was paid off it would be history as well.

Q. Now, in 1969, was O. K. Supermarkets able to secure from Republic National Bank, with the participation of the Small Business Administration, a loan in the sum of \$300,000.00?

A. Yes, sir.

Q. All right.

Was a portion of that loan used to pay any indebtedness to Kimbell Foods?

A. Yes, sir.

Q. What was the amount that was used in that way?

A. We had two accounts at that time with—

Q. (interrupting) Again, when you say "we"—

THE COURT: (interrupting) You don't need to keep asking him. I know who he is talking about.

THE WITNESS: O. K. Supermarkets had two accounts. There was an open account, and as well as I remember it was about \$19,000.00. Then there was this note amount that we had been paying \$1,000.00 a month, I [53] believe, plus the interest. So, we actually had two accounts. We had a note amount and an open account.

BY MR. CABANISS:

Q. All right.

A. One was in about nineteen—I believe about nineteen thousand.

Q. Was any payment made on either of them at the time you secured the \$300,000.00 loan from Republic National Bank?

A. Yes, we paid off the twenty four thousand, and I believe nine hundred and something, which was \$24,000.00 plus the interest.

Q. Was there—

A. (interrupting) Then we agreed to pay, I believe it was \$250.00 a week or a month on this other balance, the \$19,000.00 on open account, in addition to our regular purchases each week.

Q. Was the amount that was paid the balance remaining at that time, plus the interest, on the \$27,000.00 note?

A. Yes, sir.

Q. Now, at the time that either O. K. Super- [54] markets secured the \$300,000.00 loan from the Republic National Bank in which the SBA participated, did you have discussions with the personnel of Kimbell Foods concerning the indebtedness that existed at that time between O. K. Supermarkets and Kimbell Foods?

A. Yes, sir.

Q. Were they advised in the course of those conversations what relationship their security, their indebtedness, had with reference to this new loan that you were seeking from Republic Bank?

A. Well, we were trying to work our way out of our difficulties, and I kept them posted on what—see, the application and the other requirements for the loan took several months, and I kept them posted on how we were coming along and when they might be able to expect some relief from their indebtedness.

Q. Did Republic Bank inform you as to what sort of security they would have to have if they were to make this loan, and how it would have to stand with reference to any existing indebtedness you had?

A. Yes, I had to carry the SBA appraiser around [55] to all the stores and let him make an on-sight appraisal of all the equipment and inventory.

Q. And what was to occur with reference to that equipment and inventory insofar as this proposed loan was concerned?

A. We were to consolidate the loans, so to speak, and pay off all the lienholders that we could, pay off all indebtedness that we could, and the Bank and SBA would take a mortgage on all of our equipment and inventory.

Q. Were they taking a first or second mortgage according to the plan for the note?

A. They said that they would require a first mortgage.

Q. All right.

Were representatives of Kimbell Foods with whom you dealt during that period, were they aware of the fact that Republic stated that it would have to have a first mortgage?

A. We discussed generally the terms of the loan. I don't remember a specific conversation when I said, you know, "They had to have a first mortgage, would you release your Security Agreement?" Neither do I remember where they said, "Regardless of what you do, we will not [56] release our Security Agreement."

Q. By the time these negotiations reached the point of the note being approved, the loan being approved and the note executed and disbursement of the proceeds, did you have any understanding yourself as to whether Republic Bank would have a first mortgage upon approving the loan?

A. No, I felt that they would have a first mortgage.

Q. Now, I may have already asked this: Did you state—I believe you indicated the amount paid from the loan to Kimbell Foods. I believe that you had other creditors at that time; is that correct?

A. Yes, sir.

Q. Were these other creditors paid off completely, or were some of them left with indebtedness that was not discharged from the proceeds of that \$300,000.00 loan?

A. No, there were a number that were left with indebtedness. Some were paid off fully, some other equipment loans we paid off fully. I believe we got all the taxes current, but some of the other suppliers were still holding—still had balances. We still owed them balances.

[57] Q. Well, when you say "other suppliers," were these people who likewise had open accounts and transactions with you?

A. Yes, sir.

Q. And you state that some of them did have balances remaining that were not discharged?

A. Yes.

Q. All right.

At the time the transactions entered into in 1971 whereby O. K. Supermarkets sold three of their outlets and the sale from which the funds are involved in this case, was there any other creditor that O. K. Supermarket had at that time other than Kimbell Foods who had to agree to these sales in order for them to be carried out?

A. No, sir.

Q. There is, as one of the items of evidence that was introduced by Plaintiff, an Agreement that was entered into in February of 1971 concerning how the proceeds from these sales would be delivered to Republic Bank and held by Republic in an escrow account. Was that arrangement a matter in which you participated as one of the individuals representing the O. K. [58] Supermarkets?

A. Yes, sir.

Q. One paragraph of the Agreement includes a statement that the fund would be held subject to creditors' claims being considered against it. Are you able to state what creditor or creditors were being considered by the Republic to that Agreement at the time it was made?

A. No, I felt that there would be a number of creditors because we owed quite a few other people, and the situation was deteriorating rapidly. We didn't know what suits might come up later on, and we felt that this was the best solution, and let the Courts decide.

Q. Were there any suits at that time?

A. Not that I know of.

Q. In 1971?

A. No, sir.

Q. When was it that Kimbell Food introduced a suit against O. K. Supermarkets in the State Court in Tarrant County?

A. I don't have that. I am aware that they did, but I don't have the date.

Q. Were you aware that such litigation either existed at that time, or might result at the time [59] this Agreement was entered into?

A. Yes. I think it had already been—before this Agreement was worked out, it had already been filed.

Q. Now, you mentioned that there were other creditors that you thought might have a claim to assert. What type of creditors are you referring to?

A. Just general suppliers; milk companies, bread companies, produce companies.

Q. Were you aware at that time that any taxing authorities, such as the City of Dallas or the State of Texas, would have claims that they might assert?

A. Our bookkeeping system had broken down then and I really wasn't aware—really wasn't aware of what taxes had been paid as they accrued, and the ones that hadn't.

MR. CABANISS: Pass the witness.

CROSS EXAMINATION

BY MR. VICKERS:

Q. Mr. Kindle, in connection with the exhibits [60] which have been marked as Plaintiff's Exhibits 1, 2 and 3—

MR. VICKERS: With the Court's permission, if I could approach the witness stand so he will be aware of these exhibits that I am referring to.

THE COURT: All right.

BY MR. VICKERS:

Q. Mr. Kimbell, Plaintiff's Exhibit 1, 2 and 3 that I have just shown you, those were copies of the Financing Statements and Security Agreements of Kimbell Foods?

A. Yes.

Q. You did not at any time make a request of anyone at Kimbell Foods for a release or a termination

statement in reference to those Financing Statements or Security Agreements, did you?

A. No, sir.

Q. Now, you were represented—Did your company have an attorney representing you?

A. Yes, sir.

Q. Mr. Tom James?

[61] A. Yes, sir.

Q. You didn't request of Mr. James that he secure from Kimbell Foods—

A. (interrupting) No.

Q. (continuing)—a release or termination of any of these agreements at any time?

A. No, sir.

Q. Now, when you got—or began to make arrangements for the loan with the Republic Bank, did you inform them that there was outstanding a first lien or Security Agreement that Kimbell Foods had?

A. Yes, sir.

Q. So that they were aware of that when you obtained the \$300,000.00 loan?

A. I say "yes, sir." We had to give a detailed financial statement on everyone that we owed money to and the amount, and I am sure theirs was included in that statement.

Q. Now, you mentioned in connection with the investigation that the SBA made, that they had an appraiser come out. Do you know what value he appraised your property for in connection with that loan?

A. No, sir.

[62] Q. Do you know whether it was in excess of \$300,000.00?

A. I don't really know.

Q. Do you have any way of saying whether it was in excess of the amount that was owed to the Plaintiff at that time?

A. I'm sure, yes, sir, that it was.

Q. Now, isn't it true that when this loan was originally discussed that the Bank wanted the creditors to guarantee a portion of that loan?

A. Yes.

Q. Did you talk with someone at the Plaintiff about that?

A. Yes, sir.

Q. Was that Mr. Kidwell?

A. Yes, sir.

Q. Did Mr. Kidwell inform you that Kimbell Foods would not agree to guarantee any portion of that loan?

A. Yes, sir.

Q. Now, in reference to the payment that you testified to that was made to Kimbell in the amount of approximately \$24,000.00.

A. Yes, sir.

Q. At that time—at the time that that payment [63] was made was that money given to you by the Bank?

A. The checks were given to—We gave them a list of the amounts and the people that they were to go to, and I think they gave the checks to me and I believe I mailed them. I am not really sure.

Q. Who at the Bank gave you those checks?

A. Dan Davis.

Q. At the time that Mr. Davis gave you that check, had you given to him any releases or termination agreements from anyone in connection with the Plaintiff?

A. No, sir.

Q. Did he furnish to you any copies of any agreements to obtain from them?

A. No, sir.

Q. When you delivered those checks—that check to the Plaintiff, did you at the time of the delivery of that check request from them, in exchange for that check payment, a copy of a release or a termination agreement?

A. No, sir.

Q. In fact, as you stated, you believed that you mailed that check, and in mailing that check you made no request for a termination agreement [64] or release?

A. No, sir.

Q. No, you—

A. (interrupting) No, I didn't make a request.

Q. Now, you did make mention about something that you thought that after the 1966 you were beginning anew and that these older Financing Statements and Security Agreements were history. Nobody ever told you that that was true from Kimbell did they?

A. No, sir.

Q. Nor did your own attorney, Mr. James, tell you that?

A. No.

MR. VICKERS: That is all the questions I have, Your Honor.

THE COURT: Mr. McMasters?

MR. McMASTERS: No questions, Your Honor.

MR. JACOB: No questions, Your Honor.

THE COURT: All right.

You may step down.

(Witness excused.)

THE COURT: Any more witnesses?

R. CABANISS: No further witness, . . .

. . . .

SUPREME COURT OF THE UNITED STATES

No. 77-1359

UNITED STATES, PETITIONER

v.

KIMBELL FOODS, INC., et al.

ORDER ALLOWING CERTIORARI

Filed May 15, 1978

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.